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OVERSIGHT ON BOILERMAKERS, 1983

HEARINGS

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

EXAMINATION ON ALLEGED ILLEGAL SALES OF UNION MEMBERSHIPS OR BOOKS TO UNQUALIFIED WELDERS BY OFFICIALS OF LOCAL CHAPTERS OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS, & HELPERS

PART 3

CHAIRMAN'S STAFF REPORT, JULY 30, 1984

Printed for the use of the Committee on Labor and Human Resources

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MEMORANDUM OF PROCEDURE FOR THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE, OCTOBER 28 RESOLUTION ON THE BOILERMAKERS' OVERSIGHT HEARINGS—NOVEMBER 15, 1983

Pursuant to part (1) of the October 28, 1983 Resolution of the Senate Committee on Labor and Human Resources pertaining to access to records of the Boilermaker-Blacksmith National Pension Trust, a counsel meeting was held on November 15, 1983 and a procedure was there formulated to permit delivery of Pension Trust records to the Committee while preserving the confidentiality of Pension Trust participants and those Pension Trust records that are produced. Under this procedure:

(1) Membership lists of Boilermakers' Local Lodges 154 and 687 previously delivered to the Committee by the International Brotherhood on May 3, 1983 will be delivered by the International Brotherhood to the Executive Director of the Boilermaker-Blacksmith National Pension Trust;

(2) The Executive Director for the Pension Trust will compile records reflecting the total hours and total money listed by Pension Plan year for those participants whose names appear on the Local Lodge 154 and 687 membership lists received from the International under step 1 of this procedure;

(3) Those Pension Trust records compiled under step 2 of this procedure will be delivered under seal to the Chief Clerk of the Committee together with a second set of records containing the same information but identifying the Pension Trust participant by code number only; the second set of records, to be known as the "coded records", will be accompanied by a sealed key relating the code numbers to the names of individual participants;

(4) The Chief Clerk of the Committee shall hold the Pension Trust records and key open only to Committee majority and minority counsel in joint review. No copies of the code key or any Pension Trust records provided under step 2 of this procedure shall be made and no actions shall be undertaken that compromise the confidentiality of the code system, but, majority and minority counsel may copy the coded records of the Pension Trust for use by the Committee;

(5) If representatives of Boilermakers' Local Lodge 154 under separate agreement provide records relating to job referrals, including those records known as "work qualification sheets", to Committee majority and minority counsel and those records are used in conjunction with Pension Trust records, those records provided by separate agreement by Lodge 154 shall be encoded by majority and minority counsel as appropriate; this encoding procedure shall also apply to any job referral records

from Boilermakers' Local Lodge 687 that are made available to the Committee under separate agreement;

(6) After delivery of the encoded job referral records and the coded records of the Pension Trust to Committee staff for review, a hearing shall be scheduled within a reasonable time to take testimony of Brotherhood and Pension Trust witnesses and a report or reports shall issue to Committee members, provided that no later than one month prior to the hearing Local Lodge 154 and 687 job referral documents, if any and as required by Committee majority and minority counsel, shall be made available to the Committee for the purpose of determining eligibility for inclusion on the Lodge's out-of-work list between January 1, 1976 and October 1, 1982.

So agreed:

KEVIN S. MCGUINESS, Esq.,
Majority Counsel, Senate Committee on Labor and Human Resources.

MICHAEL A. FORSCEY, Esq.,
Minority Counsel, Senate Committee on Labor and Human Resources.

JOHN J. BLAKE, Esq.,
Counsel to the Boilermaker-Blacksmith National Pension Trust.

CONTENTS

	Page
Overview	1
Boilermaker investigation	3
Referrals	3
Union misstatements	6
Mechanics v. Journeymen	9
Maurizi testimony	10
Uneven application of rule	10
Favoritism	11
Safety concerns	13
NRC reports	15
First NRC report	15
Second NRC report	15
Third NRC report	16
Palo Verde report	17
Welding tests	17
Test cheating	17
Employee statements	17
Union testimony	19
Elbaor misstatements	21
Illegal book selling	22
Union misstatement	22
Other issues	23
50–50 raffle	23
Vacation fund	23
Operating engineers investigation	25
Lake Charles investigation	25
Sexual favors	25
Job discrimination	26
Carlock defense fund	27
Grand jury	28
Payroll padding	29
Alleged extortion of contractor	32
Cleveland investigation	34
Recommendations	36
Exhibits	38

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

CONSTRUCTION TRADE UNION INVESTIGATIONS

Chairman's Staff Report—July 30, 1984

OVERVIEW

Despite the existing number of Federal labor laws regulating the conduct of union hiring halls and the seemingly sufficient number of Federal agencies charged with ensuring compliance with these Federal labor statutes and regulations, several local lodges of international construction unions have been allowed to engage in referral practices which are both discriminatory and unsafe. Unqualified workers have been routinely referred for work as skilled craftsmen, working qualification tests have been circumvented, and favoritism has been rampant in choosing who will be referred for work. Since many of the construction sites involved are at nuclear powerplants, chemical plants, and other industrial facilities, the potential safety hazard for coworkers and the general public cannot be underestimated. Consequently, both new legislation and an administrative recommitment to enforce existing statutory obligations is needed to ensure the safety, proficiency, and durability of our Nation's construction sites.

These are the conclusions of the majority staff of the Senate Committee on Labor and Human Resources following a 2-year investigation of job referral practices by one major construction trade union—the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, & Helpers, and a 1-year investigation of another—the International Union of Operating Engineers; 10 days of hearings on this subject, held between May 11, 1982, and June 20, 1984, have produced compelling evidence of the following major abuses:

First, business agents of local lodges of these unions routinely refer unqualified persons to the most dangerous field construction projects, including nuclear and conventional power and chemical plants. Poor performance, such as bad welding, has been the result.

Second, a business agent of one operating engineers local, local 406 in Lake Charles, LA, referred inexperienced women to construction jobs at chemical plants in return for sexual favors.

Third, a broad pattern of corruption, including extortion, payroll padding, and job discrimination occurred in the Operating Engineers Lake Charles local between 1975 and recent months.

Fourth, a committee staff review of referrals by Boilermakers Local 154 in Pittsburgh revealed that the local improperly referred 273 persons as journeymen to construction jobs between 1979 and 1982. Seven of these unqualified persons were referred as journeymen to the Beaver Valley Nuclear Power Plant in Shippingsport,

PA. A parallel study by the General Accounting Office [GAO] found that 51 percent of the GAO's sample were improperly referred and paid as journeymen over this same period.

Fifth, job discrimination in these construction locals is widespread. Youthful relatives of the Pittsburgh business agent, though only recently qualified as journeymen, earned $40,000 to $49,000 a year, while veteran journeymen who were out of favor made $10,000 or less, and in one case, only $1,400. Referral of favored workers out of the sequence in which they signed the out-of-work list also was prevalent in Boilermaker & Operating Engineer locals in Cleveland and the Operating Engineers local in Lake Charles.

Sixth, two members of the International Brotherhood of Painters & Allied Trades provided affidavits that they were referred to conventional powerplants around Pittsburgh and paid journeyman's wages, in 1981 and 1982, even though they had no boilermaker experience. Journeyman's pay at that time was as much as $15.18 an hour—some 30 percent more than apprentice or beginner's pay.

Seventh, extensive testimony by rank-and-file boilermakers revealed that cheating on welder qualification tests is widespread in that union. Six different welders testified that they had taken the welding test for unqualified persons under threat of losing their jobs. And five other welders and two welding inspectors testified that they saw others cheat on the test.

Eighth, the Nuclear Regulatory Commission [NRC], rather than seeking to correct these problems, sought improperly to discredit a committee witness. Shortcomings of two reports issued by the NRC on this subject emerged under questioning from the chairman during the course of the committee hearings on the Boilermakers Union.

BACKGROUND

The committee's inquiry into these matters began in April 1982, when several rank-and-file members of the National Transient Division of the Boilermakers Union asked the majority's investigative staff to look into a series of allegations of corrupt practices by union officials in Pittsburgh and South Carolina, including job discrimination, the referral of unqualified welders to nuclear and other construction sites and the danger to safety posed by this practice.

The request by these men and women led to 7 days of hearings before the committee on May 11 and 13, 1982; June 29, August 2, and October 25, 1983; and June 19 and 20, 1984. Members of Operating Engineers Local 406 in Lake Charles, LA, and local 18 in Cleveland, OH, contacted the majority staff about similar practices in their union, and hearings were held on February 28 and 29, and May 22, 1984.

This report was completed on July 23, 1984, and includes analysis of all materials submitted by committee witnesses and other interested parties through July 19, 1 month after Boilermakers Union officials testified before the committee. Following that hearing, witnesses for the International Brotherhood of Boilermakers and its Pittsburgh local were told that the record would be closed 1 month later. On July 13, 1984, David W. Elbaor, counsel for the

international, wrote the committee that the international would not be able to comply with the deadline because of problems involved in obtaining documents from third parties and from the committee staff.

It should be noted that the allegations made by rank-and-file union members had been aired in a public hearing no less than 7 months, and in some instances, more than a year prior to the hearing on June 19, 1984. Despite this ample period for preparation, the international offered no documentation which specifically rebutted the allegations made by its members. Consequently, the staff, interested in completing the report expeditiously, and not wishing to be criticized by the international for unnecessarily delaying completion of its inquiry, chose to proceed with the preparation of the report, based on material submitted by July 19, 1984. All documents to be provided to Mr. Elbaor by the committee staff were in fact provided on June 19, 1984.

Boilermaker investigation

During the 2 years of boilermaker hearings, 19 rank-and-file union members and two welding supervisors testified under oath and made the following allegations:

Referrals.—First, several witnesses stated that various boilermaker locals (primarily locals 154 in Pittsburgh and 687 in Charleston, SC) routinely referred unqualified members for work, individuals who did not possess even the bare minimum level of competency in the trade and that these individuals were paid journeyman wages of 30 percent more than the beginner's wage to which they were entitled. Moreover, witnesses testified that unqualified welders, referred through boilermaker locals, had worked at nuclear construction sites including the Three Mile Island plant near Harrisburg, PA, and the Beaver Valley Plant at Shippingport, PA.

It was unclear at first how this allegation might be corroborated. According to collective bargaining agreements governing local 154 in Pittsburgh, strict rules were established governing who could and could not be referred for work. Between 1976 and 1979, an individual could be placed on the out-of-work list for qualified construction boilermakers if he could establish that (1) he had 4 years in the trade, (2) he had successfully completed a federally approved apprenticeship program, or (3) he had passed a competency examination.

In 1979, this rule was tightened to read that an individual could be referred for work as a qualified construction boilermaker only if he had 8,000 hours in the trade or had successfully completed a federally approved training program.

How much would such a person be paid? According to the international, as explained in a letter to the NLRB dated January 12, 1983 (see p. 6) individuals who had met the 8,000-hour standard would be paid the journeyman wage.

Thus, one way of determining the veracity of the first allegation was to ascertain whether members being paid a journeyman wage had satisfied the 8,000-hour requirement.

The committee staff first turned to the international's pension trust records, which list all the hours worked by each union

member in covered employment anywhere in the United States. While these documents could not prove conclusively whether an individual did or did not have 8,000 hours, they would provide a threshold for the committee's inquiry.

According to these documents, 699 individuals either joined or transferred into local 154 between 1976 and 1982. At the time of their affiliation with the union, 420 or 60 percent did not have either 8,000 hours or 4 years in the trade, depending on when they joined.

With regard to local 687, the figure was 238 or 45 percent of the union membership as of March 1, 1983.

The list of 420 names was then matched with documents local 154 had turned over to the National Labor Relations Board. This matching indicated that of the 273 for which there was sufficient data on which to draw a conclusion, all 273 were paid the journeyman's wage even though they did not possess 8,000 hours in the trade and had completed an apprenticeship program.

On April 14, 1984, the list of 420 names was given to local 154 so that they could submit to the committee any documents they might have which would indicate whether these 420 individuals had acquired 8,000 hours in the trade by some other means than working in covered employment.

In discussions with the officials of local lodge 154, it was learned that in most instances when an individual joined or transferred into the lodge, he would bring to the union hall W-2 records or other personal proof of his work history. A decision would be made by the local's business agent at that point as to how the individual should be classified. Each individual was supposed to fill out a qualification sheet which indicated whether he had 8,000 hours or 4 years in the trade, depending upon the year he joined, and these qualification sheets were retained by the local.

Consequently, the local was asked and agreed to supply to the committee information indicating whether each individual on the list of 420 names was actually affiliated with local lodge 154, a copy of the individual's qualification sheet, and what classification this individual was given when referred out for work through lodge 154. In late May 1984, these materials were delivered to the committee.

According to these documents, 303 of the 420 individuals on the list signed a qualification sheet which stated that the member had either 8,000 hours or 4 years in the trade. Qualification sheets were not provided for 117 persons or 28 percent of the names on the list. The materials submitted to the committee provided no other indication of whether these individuals did in fact have 8,000 hours or 4 years in the trade, whether they were classified as a journeyman or whether they were paid a journeyman's wage.

The staff review also indicated, however, that more than half of the qualification sheets were not signed until at least 6 months after the members became affiliated with local lodge 154. In fact, 48 percent of the classification sheets submitted to the committee were signed more than a year after the individual became affiliated with the union.

Consequently, the documents received by the committee did not rebut this initial allegation. Instead, the materials submitted by the union appeared to support testimony by union witnesses that

unqualified boilermakers were being referred for work and paid at the journeyman rate. During the hearings, three of the witnesses before the committee—Charles Shirley, Glenn Bowser, and Francis Darrell Hall—stated that they personally had been referred for work and paid at the journeyman's wage rate, even though they did not have the requisite 8,000 hours in the trade and had not completed a training program.

Moreover, the General Accounting Office testified on June 20, 1984, that in a study of 85 individuals referred for work through local 154, 43, or 51 percent, did not have the requisite 8,000 hours nor had they completed an apprenticeship program at the time they were referred as journeymen. The GAO report was based on NLRB records and tax information generated in a job discrimination proceeding against local 154 in Pittsburgh; it was comprehensive with respect to the 85 workers examined. The GAO stated that it sought to do a broader sample of worker qualifications in local 154, but that its effort were thwarted by refusal of attorneys for both the international and local 154 to turn over the necessary documentation in time for the June 19 and 20, 1984, hearings.[1]

The attorney for local 154, Mr. Joseph Maurizi, was asked by committee counsel on May 22, 1984, approximately 1 month prior to the hearing, to provide any additional documentation that might exist regarding the qualifications of the 273 workers. No additional documentation was provided.

At the hearing on June 19, 1984, Mr. Maurizi argued that individuals were qualified on the basis of their own ability displayed on the job. Under questioning, however, he admitted that the 8,000 hour standard adopted by local 154, to be used to determine who could be referred for work as a qualified construction boilermaker, was waived by the local lodge on its own volition. The waiver was not addressed in the collective bargaining agreement in force during this period, nor was it explained in the international's submission to the National Labor Relations Board on January 12, 1983, which purported to explain how local lodge 154 interpreted the 8,000-hour standard.

The committee did not receive pay records concerning the members of local 687 and, as a result, was not able to complete a comparable study of that lodge. Nonetheless, the staff went ahead and examined the pension records for that local and learned that at the end of 1982, there were 300 local 687 members who had less than 8,000 hours boilermaker experience. The local's late president, Mr. Kenneth Horne, told the committee staff prior to his death in August 1983 that qualification sheets were not maintained, and indeed one witness, Charles Shirley, stated that he was not even asked his qualifications when he bought his journeyman's book in Charleston from Mr. Horne despite his not having 8,000 hours. Of the 300 Charleston boilermakers who had less than 8,000 hours at the end of 1982, 238 were classified as "mechanics" or "journey-

[1] Following the hearings, the GAO reviewed the committee's documentation on referrals of unqualified boilermakers. On July 23, it reported to the committee that it agreed with the majority staff that 255, or 96 percent, of the 273 persons in the majority staff's study had been referred improperly. The 255 persons found to be unqualified by the GAO included all seven of the unqualified persons that the committee staff determined were referred improperly as journeymen to the Beaver Valley Nuclear Powerplant in Shippingport, PA. See p. 13.

men," 18 as trainees, 21 as apprentices, and 23 with no classification at all. At the close of the June 19 hearing committee Chairman Orrin G. Hatch asked Mr. Charles Jones, president of the international, to provide the committee the pay records of local 687 to determine whether any of the 238 unqualified mechanics were referred as journeymen and received journeyman's pay. The attorney for President Jones replied that he would attempt to locate the documents and supply them if they were still in existence; however, the staff had not received any notification regarding the disposition of these documents by the time this report was written.

Union misstatements.—Throughout the discussion of the 8,000-hour requirement for journeyman status in the boilermakers' union, witnesses for the international and for local 154 in Pittsburgh made numerous statements under oath that could be interpreted as intended to confuse and mislead the committee regarding the significance of the 8,000-hour requirement.

The 8,000-hour requirement was adopted by the union and contractors in the mid-1970's and late 1970's as a quality control device to guard against referral of unqualified persons to construction jobs. It appeared in the collective bargaining agreements governing referrals from local 154 from 1979, through the present, and local 687 from 1976 to present.

An extensive explanation of the 8,000-hour standard was contained in a January 12, 1983, letter from Joseph W. Moreland, counsel for the international, to Joseph M. McDermott, field examiner for the National Labor Relations Board in Pittsburgh. Mr. Moreland's letter came in response to Mr. McDermott's request for clarification of the requirement as it related to a case of two rank-and-file boilermakers who had argued that they should be referred for work on the basis of ability even though they had not completed an apprentice program and did not have 8,000 hours of practical boilermaker field construction experience.

The Moreland letter made clear that the 8,000-hour standard adopted by the union was an absolute standard for journeyman referral and pay. It stated that the union agreed with employers that:

> A uniform standard requiring practical experience roughly equivalent to that acquired through a formal apprenticeship program, four to five years of full-time on-hands experience should be required of those who did not have the benefit of formal apprenticeship training. The 8,000 hours requirement for classification of a registrant as a journeyman boilermaker was the amount of experience agreed upon in such negotiations.

Moreland went on to state that:

> The 8,000 hour requirement is obviously intended to serve as an objective mechanism whereby both to avoid any inference of invidious discrimination and to assure contractors that they will receive the services of skilled, experienced construction boilermakers in accordance with the wage scale set forth.

Under the 1979 collective bargaining agreement between local 154 in Pittsburgh and the boilermaker employers of the western Pennsylvania area. The letter concluded that the 8,000-hour requirement for registration on the out-of-work list could not be characterized as aribtrary. According to Moreland.

> This requirement for journeyman referral and compensation is not an abstract figure plucked from the air or accepted with nadiral disinterest in the desires of the

membership. Bonafide collective bargaining has produced precisely that which the law seeks to promote: a peaceful accommodation of competing interest effected by the parties themselves.

Moreland said the 8,000-hour standard had been adopted by a "majority" of boilermaker locals where "collective bargaining has resulted in an election to adopt referral standards conforming to the minimum standards."

Despite the clear and precise language of the Moreland letter, boilermaker witnesses testified evasively regarding the application of the 8,000-hour requirement. In a sworn statement provided to the committee on October 25, 1983, international president Charles Jones said: "There is no link between 8,000 hours and membership or any classification in this union as a mechanic or journeyman, and no contractor can be forced to hire a referral based on union membership." Neither the chairman nor any witness contested the Jones statement with respect to union membership, as there is provision under the union's constitution for apprentice, helper, and trainee memberships for persons with less than 8,000 hours. However, the chairman and majority staff considered it a significantly misleading statement that 8,000 hours had nothing to do with the journeyman's classification. As the chairman pointed out repeatedly on June 19, amid union disclaimers, the Moreland letter "speaks for itself" on that point: The 8,000 hours clearly was the standard for journeyman's classification and pay.

In addition, witnesses for the General Accounting Office and the Pennsylvania Crime Commission testified on June 20 that the employer witnesses they had interviewed in the course of investigations on referrals of unqualified persons uniformly believed that any person referred to them as a journeyman should have 8,000 hours. The Pennsylvania Crime Commission witness, Mr. Chris DuCree, director of the commission's Pittsburgh office, testified that referring out workers as journeymen without 8,000-hours work experience or completion of an apprenticeship was "theft by deception" and "illegal under Pennsylvania statute." Since the opening of his investigation in September 1983, DuCree said that more than 50 interviews had been conducted of local 154 and National Transient members in the Pittsburgh area and that almost all of those persons interviewed had received journeyman's wages even though they did not meet the criteria for journeymen.[2]

Mr. Jones, when confronted with the Moreland letter on June 19, 1984, argued that the 8,000-hour requirement was simply for placement on the out-of-work list and was a first step in the screening and testing of workers. Both Mr. Jones and Mr. Elbaor argued that employer tests would weed out the unqualified workers. However neither witness squarely addressed the testimony raised by six rank-and-file boilermakers before the committee that they had cheated on the test (see pp. 17–19). Although such admissions had been made at every boilermaker hearing except October 25, 1983, Mr. Jones failed to investigate those allegations. The union presi-

[2]A recent memorandum from the International Brotherhood of Boilermakers argues that potential state criminal prosecution of union officials for illegal referral practices would be preempted under the National Labor Relations Act. Such an argument, which may well be accurate, simply emphasizes the need to amend existing federal labor statutes.

dent also ignored a conclusion that seemed to follow from reading the Moreland letter:

> That no person with less than 8,000 hours or completion of apprentice training should even be on the journeyman referral list in the first place or even referred for testing.

Both Messrs. Jones and Elbaor argued that competent people with less than 8,000 hours could be assigned and paid as journeymen if the contractor so desired; however, neither witness focused on the unlikelihood that such determinations were made by contractors with regard to such a large number—273—of referrals of unqualified persons identified in the committee staff's study on local 154. The testimony of Messrs. Jones and Elbaor also ignored the question of whether employers associated with electric utility or government construction projects had the right to pay workers more than they are qualified to receive under binding collective bargaining agreements. The majority staff feels that contractors have no such right and that to do so is to overcharge the ratepaying public or taxpayer. Where an 8,000-hour rule is in effect, persons not meeting that standard should be referred and paid as apprentices, helpers or trainees, depending upon the local binding collective bargaining agreement.

Statements by Mr. Jones regarding the findings of the GAO report and other Federal investigations also appeared to be significantly misleading. GAO witnesses stated on June 19, 1984, that Jones had incorrectly testified on at least four portions of the GAO's "statement of facts," a document on which the GAO testimony was based. Mr. Jones also made the apparently erroneous statement on June 19 that Federal agencies had "thoroughly investigated" all the charges made before the committee "and found them and their inferences to be false, ficitious, and untrue." Jones' statement ignored the fact that an investigation of the charges by the Federal Bureau of Investigation was still ongoing, that two Nuclear Regulatory Commission investigations had been discredited at committee hearings (see p. 15) and that the National Labor Relations Board had recommended a $5 million settlement against the union in a job discrimination case that also was still ongoing. In point of fact, no Federal investigation had ever found for the union, except for the NRC reports, which focused only on a small portion of the overall allegations and were ultimately discredited by the chairman in the course of the hearings.

In addition, Mr. Jones testified on June 19, 1984, that:

> Under our 8,000 hour rule, both union and non-union persons who seek placement on the hiring hall's out-of-work list from which job referrals are made are required to produce documentary or other evidence of 8,000 hours actual, practical working experience in Boilermaker-type field construction.

When informed that local 154 was unable to vouch for the qualifications of 273 of the persons it referred erroneously as journeymen between 1979 and 1982, Jones said the verification "is the warranty of the individual who makes them" and that it would be "somewhat difficult and quite expensive to go into a program of verifying each and every statement made in one of these representations."

Again, in contrast to Mr. Jones' statements, five boilermaker employees told the majority staff in telephone interviews prior to the hearing that the unions made the determination as to who was a journeyman and that the employers generally tested only those persons referred to as welders. Employer statements were as follows: Robert K. Dorman, director of construction for Wheelabrator-Frye, Inc., in Pittsburgh stated that:

> The employer calls the hall and asks for *x* number of journeymen. The union in turn answers the request by referring the number of journeymen requested. The only type of test conducted that would determine his/her qualifications would be a welding-certification test. Essentially you take the union's word that they are sending you what you ask for—there's a certain amount of trust involved.

Paul Heard, equal employment coordinator for Universal Corp., in Baton Rouge, LA, said:

> If we call the hall and ask for *x* number of qualified journeymen, then we assume the union will answer that request by providing us with such. If we find that they do not perform satisfactorily, then we will lay them off the job. In a sense it is blind trust that the hall will send us qualified individuals.

Jim R. Cleveland, president of Cleveland Consolidated, Inc., in Atlanta, GA, stated that his company generally takes the union's word that those referred by them are qualified to perform the work. He, like Heard, said that a certain amount of trust was involved.

Bob Sheehan, director of human resources for Schneider Enterprises, Inc., of Pittsburgh, one of the contractors at the Beaver Valley nuclear plant, said that his company, too, only tested welders. Asked how he knows how to distinguish between apprentices and journeymen nonwelders, Sheehan replied: "The union provides us with that information."

Dean Freeman, manager, field labor relations for Pittsburgh Des Moines Steel Co., stated that if he, as the employer, were to make a request of *x* number of journeymen boilermakers then he would expect the union to fulfill that request and supply the needed qualified journeymen. He also said that in the past it could be possible for the union to have sent less than the number of qualified journeymen asked for and said they were qualified. In other words, they could have been paying journeymen wages to helpers and apprentices. Asked if it could easily be detected, whether a worker was qualified to receive the journeymen's wage, he stated that in some cases it would be very difficult, especially if it was a job of short duration.

Mechanics v. *Journeymen*.—Further confusion was caused at the hearings by denials on the part of Mr. Jones and Mr. Elbaor that the "mechanic" designation on union cards sold to various witnesses who had less than 8,000 hours and had failed to complete an apprentice program had anything to do with journeymen status in the union. "The 8,000-hour requirement has nothing to do with the mechanic's card," said Mr. Elbaor at the June 19, 1984, hearing. However, three witnesses who did not meet the union's qualification standards for journeymen status—Charles Shirley, Francis D. Hall, and Glenn Bowser—said the mechanics books that they purchased allowed them to be referred and paid as journeymen. Finally, the GAO's testimony left no doubt that the terms "mechanic" and "journeymen" were used interchangeably in the boilermakers

union. "A 'mechanic' as used in the boilermaker trade is a journeyman," said Franklin A. Curtis, Associate Director of the GAO's Human Resources Division, at the June 20, 1984, hearing.

Maurizi testimony.—Another significant statement that could be interpreted as intended to confuse the committee was the August 2, 1983, testimony by Mr. Joseph Maurizi, counsel for local 154 in Pittsburgh, that the 8,000-hour requirement was not adopted by local 154 until October 1, 1982 [August 2, 1983, hearing record, p. 308]. In fact, the joint referral committee of local 154, made up of union and contractor representatives, first adopted the requirement on February 9, 1979, and it was incorporated into the Collective Bargaining Agreement that went into force on June 1, 1979. This information was first made available to the committee staff in May 1984, as an attachment to the January 12, 1983, Moreland letter to the NLRB. (See p. 38.)

At the time of Mr. Maurizi's 1983 testimony, the committee staff had no way of knowing that the 8,000-hour requirement really had been put in effect in 1979—not 1982—and that the 273 persons had been improperly referred while the requirement was in effect over those 3 years. Confronted by the Moreland letter at the June 19, 1982, hearing, Maurizi said that he meant the requirement had not been "implemented" or enforced prior to October 1, 1982.

By failing to disclose the existence of the 8,000-hour requirement, whether "implemented" or not, between the years of 1979 and 1982, Mr. Maurizi's testimony by itself, would mislead the committee on a significant issue. A close reading of his August 2, 1983, testimony can only leave the impression that the 8,000-hour requirement did not exist in any form prior to October 1, 1982. Had it not existed, there could be no finding that 273 persons were referred improperly between 1979 and 1982. Under questioning Mr. Maurizi conceded that the local union had agreed to a collective bargaining agreement containing this requirement at the insistence of the International but that the local had chosen not to enforce it.

Uneven application of rule.—Despite statements by Messrs. Jones and Elbaor that fast learners without 8,000 hours experience should get journeyman referrals, evidence emerged at the hearings that some union locals used the 8,000-hour rule against union dissidents who considered themselves qualified for journeyman work but did not possess 8,000 hours in the trade or completion of an apprentice training program.

For instance, Francis Darrell Hall, a member of a group seeking to reform local 154's hiring practices, testified that he was unable to obtain referrals out of local 154 because he did not have 8,000 hours boilermaker field experience. He did, however, have 29 years experience as a welder for the Pullman Standard Co. During the same timeframe that the local was denying Hall work, it was routinely referring individuals who did not possess 8,000 hours or apprentice training to construction jobs at journeyman's pay.

Another welder, Theodore Hull, a dissident member of local 744 in Cleveland, OH, testified that he was not referred despite 20,000 hours total boilermaker experience because about 14,000 of those hours were in a boilermaker shop instead of field local. At the same time, he said, numerous friends and relatives of local 744 offi-

cials were getting referred as journeymen, without having 8,000 hours or apprentice training.

A third rank-and-file witness, Charles Shirley, a 7-year veteran boilermaker with previous experience as a millright welder, told the committee that he could no longer get referrals out of local 154 because he was 40 hours short of having his 8,000 hours. Shirley called his predicament a catch-22 situation. He held a fully qualified union journeyman book but could not get the 40 hours necessary to complete his 8,000 hours and thus get on the journeyman referral list. Nor could he get the local to credit his previous service as a millright welder.

Such uneven applications of the 8,000 rule are egregious and should not be permitted by the union. In the staff's opinion, exceptions should be made for comparable experience such as that of Hall, Hull, and Shirley. However, a competent young boilermaker should have to complete an apprentice or trainee program in the time-honored guild tradition of the construction unions, before he can be referred as a journeyman and get journeyman's pay.

Favoritism.—Numerous witnesses also testified at the hearings that they were discriminated against by business agents who referred friends or relatives out of sequence on the local's out-of-work list.

Cleveland boilermaker Theodore Hull, by now relegated to a "C" list for referrals of members in a subjourneyman classification, testified on June 20, 1984, that he was incurring the same discrimination on the "C" list that he had experienced on the "A" list. The "A" list included numerous relatives and friends of union officials who had been placed on the list despite their lack of qualifications. Mr. Hull said that on June 7, 1984, he was told by local 744 officials that 9 persons were ahead of him on the "C" list, but he subsequently learned that 10 persons had been referred in front of him by the time of his testimony before the committee some 13 days later. Hull said he had asked for his place on the list "many times" over the last 6 years, but that June 7, 1984, was the first time he had ever been told. He said he never had been allowed to examine the local's out-of-work book over this period.

Another local 744 witness at the June 19, 1984, hearing, Joe Danko, of Newell, WV, said he had been "bypassed many times" on the local 744 out-of-work list. "I'm not held in too high esteem there for the simple reason that if something is wrong, I make it a point to make sure that it's known." Mr. Danko also alluded to the discriminatory nature of the different types of referral lists kept by the local. "They have three referral lists," he said. "They have the A list, the B list, and the C list, and which list you're on depends on how much esteem you're in."

A pattern of discrimination clearly had developed in Pittsburgh Local 154 between 1979 and 1982, when relatives and friends of the late business agent, Fred Gualtieri, were earning 5 to 10 times what Mr. Gualtieri's critics were earning, although all were qualified journeymen who were entitled to equal treatment on the local's out-of-work list. For instance, in 1980, Wayne Boring, a witness before the committee in 1982, earned $8,127, while Gregory P. Gualtieri, nephew of the late business agent Fred Gualtieri, made $49,171. In 1980, Anthony Asolone made $5,064, while Michael P.

Gualtieri, the son of Fred Gualtieri, made $42,910, and William A. Lawlor, Jr., son of local 154 business representative, William Lawlor, Sr., made $37,935.

In 1981, Darrell B. Hall, a witness before the committee in 1981 made $1,404, while Richard K. Rittenhour made $30,807. According to testimony by local 154 member John Fleck on June 29, 1983, Rittenhour's father worked as a carpenter on Fred Gualtieri's vacation home at the Seven Springs Resort near Pittsburgh in the late 1970's.

Also, in 1981, Gary Boring, a witness before the committee in 1982 and 1983, made $16,227, while Greogry P. Gualtieri made $42,477. And in 1981, Wayne Boring, Gary Boring's brother, made $12,445, while Carl Pitzerel, a cousin of Fred Gualtieri's, made $31,043.

In 1982, Robert P. Stockdill, a witness before the committee in 1983, made $4,439, while Michael P. Gualtieri made $29,220. And in 1982, Gregory P. Gualtieri made $39,998, while French Gower, a witness before the committee in 1983 and 1984, made $7,100.

When these comparisons were raised by the chairman at the June 19, 1984, committee hearing, local 154 attorney Joseph Maurizi objected that the comparison was unfair because the union dissidents had not necessarily been seeking work at all times in local 154's jurisdiction and might not have accepted all jobs that were offered to them. However, Mr. Gerald Kobell, Director of the NLRB office in Pittsburgh, told the committee staff that he considered these factors prior to seeking large monetary awards for Gary and Wayne Boring, Anthony Asolone, Darrell Hall, Robert Stockdill, and French Gower. The NLRB proposed restitution of $398,847 in total lost earnings due to discrimination against these six individuals between 1977 and 1982. These amounts are being contested by local 154 and were not expected to be finalized before October 1984. The local in July 1984 offered a $2.5 million settlement of the NLRB's overall $5 million claim for the 78 dissidents involved in the case, but this was rejected by the dissidents.

The depth of animosity against dissidents in local 154 was further illustrated when two members of the International Brotherhood of Painters & Allied Trades in Pittsburgh submitted affidavits stating that they had been referred as boilermaker journeymen and received journeymen's pay in 1981 and 1982—years in which dissidents received very little work out of local 154. The affiants, Thomas J. Smith and John A. Nagy, said they had absolutely no experience as boilermaker journeymen at the times they received their journeymen referrals to powerplants in the Pittsburgh area.

Testimony regarding hiring abuses in local 687 in Charleston, SC, was given on June 29, 1983, by a confidential witness who testified behind an opaque screen to protect his identity. This witness, known as Welder No. 1—South Carolina, said that unqualified persons who were friends of the local business agent were being referred ahead of veteran journeymen on the out-of-work list. "In my local alone, I would say that 65 to 70 percent—of the 750 members of the local—are unqualified." He said journeyman books were sold to carpenters, bartenders, barowners, and persons from other trades that had nothing to do with boilermaking. "What I am trying to tell you," he added, "is that these guys have never seen a

boiler. Some of them are apple packers. Some are car salesmen. Some of them are just plain deadbeats. They could not hold a job at all without a union book in their hand."

Safety concerns.—The apparent abuses of the 8,000-hour rule, a rule adopted by the union to ensure a minimum level of competency in the trade, and the ambivalent attitude toward enforcement of the rule that was displayed throughout the hearings by witnesses for the international, raises concerns over the safety of the plant projects to which unqualified workers are referred.

At the June 29, 1983 hearing, Welder Witness No. 2, a confidential witness from Pennsylvania who testified behind the screen, stated under oath that approximately 60 percent of the boilermakers he worked with in the fuel pool system on unit 1 of Three Mile Island in the mid-1970's were not qualified for the union journeyman books they held. He said that many of these persons had bought their books "right there on the job" from John Chappel, a business agent for local 636 in Titusville, PA.

Related testimony about the lack of qualifications on the part of some members of local 636 came from James Quinn, secretary-treasurer of local 154, who testified at the June 19, 1984, hearing that local 154 at one point had found it necessary to stop referring out local 636 members because of their lack of qualifications. Quinn said:

> Once it was determined that Local 636 cards were coming in with every Tom, Dick and Harry off the street that couldn't do anything, but the fact that they had a Boilermakers card, I personally went to the International Vice President of our area and asked him to look into it. He looked into it and stopped it as far as Pittsburgh went, and Pittsburgh did not put any 636 new men on.

In its study of local 154's referral of 273 unqualified boilermakers as journeymen between 1979 and 1982, the majority staff attempted to identify the locations to which a sample number of these persons had been referred. The staff wrote and received responses from four major contractors in the local 154 area—Babcock & Wilcox, Inc., Foster-Wheeler Energy Corp., Schneider Enterprises, Inc., and GPU Nuclear. Responses indicated that between 1979 and 1982, seven unqualified persons who did not meet the 8,000-hour standard had been referred by local 154 to the Beaver Valley nuclear powerplant at Shippingport, PA, and 166 others had been referred to conventional powerplants or other industrial facilities in the local 154 area.[3]

Testimony throughout the hearings revealed that dangerous practices can be the consequence of referrals of unqualified persons and lax monitoring procedures on the part of union officials and company management. For instance, Welder Witness No. 2 at the June 29, 1982, hearing, testified that "some of the worst work I've ever seen" was done on the Three Mile Island unit 1 fuel pool and fuel transfer pipe where the witness worked with allegedly unqualified persons. The witness testified that some incompetent welders attempted to weld:

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[3] This report will not identify these individuals by name because of an agreement with the union not to disclose names of persons for whom pension records and qualification sheets were provided by the union as a means for the committee's identification of worker qualifications.

With stick wire and they could not weld it. So it was undercut, full of sludge. They just took a tig torch and washed it down and left the slag right in there . . . There is one big transfer pipe. The whole one end of the reactor side was like that, and there were probably 25 to 30 studs in the fuel pool itself, where they had had bad welds and they took and washed them all down with a tig torch to make them all look uniform.

The witness testified that although the Nuclear Regulatory Commission did not consider the fuel pool a primary safety-related system, the fuel pool residue constituted nuclear waste, and if the fuel pool ever fell apart, nuclear waste could leak and cause an accident.

In related testimony, witnesses testified as follows: French Gower, a member of the National Transient Division of the Boilermakers Union, testified that he was ordered to do electrical wiring at the Beaver Valley Nuclear Plant in 1980, even though he was a boilermaker and not an electrician. Mr. Gower also testified that at the Cardinal powerplant in Brilliant, OH, in 1980, unqualified welders cracked all the welds on a device called the "super heater header" on the boiler.

Walter J. Fisher, or Runnemeade, NJ, a retired member of Boilermaker Lodge 329 in Philadelphia, testified that a boiler at the Toronto, OH, plant of Ohio Edison Electric Co., had to be completely redone because of shoddy, improper workmanship by inexperienced and unqualified welders. Fisher said that when he spotted a bad weld on that job, he informed the welder and said: "It is no sin to admit that you can't weld. You might be a tacker or something like that, but you're welding a joint there that is going to leak. Why don't you tell this guy to put you on as a fitter?" Fisher said, however, that the job foreman did not care: "He did not say anything. Neither did the pusher. So the guy just kept on welding."

Theodore Hull testified that on a job at the Hammermill Paper Co., in Erie, PA, in 1983, a fellow boilermaker "was so drunk he just couldn't handle the job and he blew a big hole in the bottom of the tube" that he was welding. Hull said the foreman did not fire the welder but told him to "go in some corner and sleep it off."

Thomas J. Smith, one of the two painters who were referred as boilermaker journeymen in Pittsburgh, wrote in his affidavit about the competency levels of those working at the powerplant job to which he was referred in 1981:

All painters worked the day shift, and Russ Franciscus, Ed "Bunko" Wagner, and Whitey Rabitow, also painters, worked at night on the job. I worked with an impact hammer, a spud wrench, and a burning torch on the expansion joint of the precipitator. I also assisted a welder who welded brackets on upside down because he did not know what he was doing. I had no boilermaking experience before, so I had to ask the foreman, pusher or other workers how to do each job assigned.

Welder Witness No. 1, the South Carolina witness who testified at the June 29, 1983, hearing, said he had witnessed poor work on the part of unqualified welders on the last two powerplant jobs to which he had been referred. "It was worse than shoddy—it was a first-class butcher job." He said he had observed numerous bad welds on those jobs as well as dangerous practices such as lifting materials with cables that were under strength. In one instance at the Cross, SC, generating station in 1982, he said that several unqualified welders failed to pass their welding test but the union put them to work anyway.

Gary Boring, a National Transient Division member who gets his work referral out of Pittsburgh Local 154, testified that while welding on the condenser of Three Mile Island unit 2 in the mid-1970's, he wanted to remove some slag that was present in a weld that had been started by another welder. But when he brought this to the attention of the foreman, he was told to go ahead and weld, regardless of the slag present, which he did. Boring also alleged to NRC investigators in 1979 that several unqualified welders had bought union books that allowed them to work at Three Mile Island without passing welding tests.

NRC REPORTS

NRC sought, improperly in the opinion of the majority staff, to discount the allegations by Gary Boring and the confidential witness who testified on June 29, 1983, to minimize the problems at Three Mile Island.

First NRC report.—On April 9, 1980, NRC issued a report finding no evidence to substantiate charges Boring had made to NRC in 1979 regarding his own bad welds and the presence of unqualified welders at Three Mile Island. At the May 11, 1982, hearing, however, it was revealed that (1) NRC did not contest Boring's allegations of slag in his own weld but simply ignored that incident because "the condenser is a nonsafety system not included in the quality scope of work at Three Mile Island," and (2) NRC had dismissed Boring's allegations of unqualified welders working with illegal books at Three Mile Island without interviewing any of 34 principals named by Boring. [Boring testified that he had been asked by Labor Department investigators not to give NRC the names; however, NRC did not make an effort to get them from the Labor Department and closed its investigation without interviewing any of the 34 individuals. See May 11, 1982, hearing record, p. 52.]

It should also be noted that the NRC's contention that the condenser is not a safety system was contradicted by the NRC's subsequent testimony that radioactive material could leak from the primary to the secondary side of the cooling system, where the condenser is located [June 29, 1982, hearing record, p. 84]. While damage to the condenser would not be potentially as serious as would damage to a pipe in the primary or secondary cooling loops, allegations of bad welds in the condenser or any other section of a nuclear powerplant should not be taken so lightly by the NRC. And the presence of bad welds in a nonsafety system should make NRC more wary that they could have occurred in a safety system as well.

Second NRC report.—Following the May 11, 1982, hearing, NRC made another attempt to discredit Gary Boring. In a report issued on June 10, 1983, NRC stated that Boring had retracted his earlier statement about bad welds at Three Mile Island. The report accused him of making direct contradictions in his statements, and it questioned his continued credibility as a Government witness. Questioning of a panel of NRC witnesses at the June 29, 1983, committee hearing revealed, however, that NRC had confused what Boring was saying. He had said only that he had no knowledge of bad welds at what NRC considered safety systems, but he had not

retracted his statement about bad welds in the condenser, a non-safety system [June 29, 1983, hearing record, p. 142-149].

Boring testified at the June 29 hearing that in an interview on March 29, 1983, he had repeated his statement about bad welds in the condenser but that NRC investigators had disallowed it and wanted to talk to him only about the safety systems. When he told them that he had no knowledge about any bad welding in those systems, he said NRC characterized his statement as saying he had no knowledge of any bad welds at all, which was not what he had said. After confusing him in this manner, NRC accused Boring of making contradictory statements, which he in fact had not made. Chairman Hatch asked:

> How can your agency in good conscience dismiss his (Boring's) entire testimony as contradictory, whan an affidavit which your own investigator drafted on his own terms left out critical information that had been given your agency by Mr. Boring on at least two or three different occasions? That is what you are using to compare with his statements. . .

The chairman concluded that:

> It seems to me you chose to dismiss the entire investigation because Gary did not work in the "safety" area. Now, whether Gary worked or did not work in the safety area should not be determinative, because he shows that unqualified welders were working on the nuclear site. I think if you had interviewed the 34 welders (on Boring's list), you might have found out where they worked and maybe have resolved the issue.

NRC later asked the FBI to interview the 34 welders so as to assure confidentiality of their interviews. NRC said it could not legally grant absolute confidentiality.

Ultimately at the June 29, 1983, hearing, NRC investigator R.K. Christopher, one of the NRC agents who had interviewed Boring on March 20, 1983, repudiated the report's statements questioning Boring's credibility: "I do not question Gary's credibility or his intent by any stretch of the imagination." Rather he said his agency did not have the resources to focus on the condenser allegations or interview the 34 welders. "What I think we are trying to state in our position is that * * * we have extreme resource problems," Christopher said, "I have the sum total of three investigators in my office to cover the entire United States." In the staff's opinion, under close examination, NRC seemed more concerned with quickly ridding itself of the problems raised by Mr. Boring than with ascertaining whether the allegations were accurate.

Third NRC report.—On September 2, 1983, the NRC issued a report finding that plant safety was not threatened by the allegedly poor workmanship in the welds on the fuel pool and fuel transfer pipe of Three Mile Island unit 1 and the condenser of unit 2. In the staff's judgment, the body of the NRC report did not support the report's conclusions. For instance, the report found that the inspected weld joints in the Unit 2 condenser "indicated poor final weld workmanship," And the report said there were:

> Many areas of weld spatter, excessive convexity, improperly removed weld slag, weld clips that were knocked off with a hammer pulling out base metal, and many grinding scars.

With respect to the Unit 1 fuel pool, the report found that:

> 20 of the 38 pipe ends had white deposits on the end of the pipes which indicated that they might have leaked sometime in the past.

With respect to the stud attachment welds in the fuel transfer pipe, the inspectors could not make a visual inspection because the welds were embedded in concrete. No x ray inspections were made of any welds in either the unit 1 fuel pool, fuel transfer canal or the unit 2 condenser, although such x-ray tests had been requested by Chairman Hatch at the June 29, 1983, committee hearing. [For chairman's request on x rays, see June 29, 1983, hearing record, p. 19.]

OTHER NRC ISSUES

Palo Verde report.—In a letter dated December 9, 1983, Committee Chairman Orrin Hatch asked NRC Chairman Nunzio Palladino to investigate safety shortcomings at the Palo Verde Nuclear Power Plant in Wintersburg, AZ, that were alleged in a confidential letter to the committee by a boilermaker who did not testify in the committee hearings. The NRC found that none of the work in question involves any equipment which performs a nuclear safety-related function at Palo Verde. Therefore, the report cited "poor practice" in construction of a storage tank at the plantsite, and it found that the tank had buckled and collapsed because it had not been vented properly to the atmosphere. To the majority staff, it appears that in this instance, the problem lay in the design of the tank, not in its construction. The staff feels that these allegations were relatively minor in nature, and do not impact on this report's conclusions involving welding.

Welding tests.—Another NRC issue that emerged at the hearings is that NRC does not uniformly require contractors at nuclear power construction sites to institute positive photographic identification systems of persons taking welding tests. In a May 21, 1982, letter, Committee Chairman Hatch asked NRC Chairman Palladino to institute such a system to guard against cheating on welding tests. However, Chairman Palladino wrote back on June 28, 1982, that a sampling program of that sort would be instituted but that nothing more extensive could be done. The staff considers it essential that NRC order all contractors at nuclear plant sites to require positive photo identification to ensure the integrity of their welding tests. [For testimony on photo identification, see June 29, 1983, hearing record, pp. 148–149.]

TEST CHEATING

Another major allegation by rank-and-file witnesses at the hearings was that union officials forced them to take welding tests for inexperienced or unqualified persons in order to get them qualified for powerplant jobs. During the course of the hearings, six witnesses testified, under oath, that they had taken tests for other individuals at the express instruction of union officials. An additional five witnesses testified, again under oath, that they had seen competent welders taking tests for others. Two other witnesses testified that, while they did not have direct knowledge of test cheating, conditions were so lax in the test booth that cheating was likely.

French Gower, a member of the National Transient Division, testified that he had taken 100 to 150 tests for other persons over the course of his career, always under pressure from union officials.

John Fleck, a member of local 154, testified that he had taken 21 tests at the Keystone power house in 1977 to qualify about 15 to 18 men. He said he did so under orders from "the director on the job." He later explained to the majority staff that this meant the foreman, a union official.

Gary Boring, a member of the National Transient Division, testified that in December 1977, he took between 13 and 15 welding tests at the Conemaugh generating station in Huff, PA. He said: "I was specifically directed to take these tests by, I believe, what I will say is the director, the job foreman, and the steward."

Wayne Boring, a member of the National Transient Division, testified that he took tests for four or five other welders in 1981 at the Duck Island powerplant in Trenton, NJ. He said he did so at the request of the welding supervisor, a company official. Boring later told the staff that this official was pressured by the union "to get men qualified for the job." Boring added that on another occasion in 1981, at the Keystone powerplant in Pennsylvania, he took a test "for a young guy having a hard time with the tests." He said he was asked to do so by "the official or whatever in charge of the test booth there."

Welder witness No. 2 at the June 29, 1983, hearing, testified that over the last 3 or 4 years he had taken welding tests for 10 or 11 people under orders from his union foreman. Asked why he did so, he said, "I needed the job." [These tests were at conventional powerplants and not at Three Mile Island, where much of his other testimony was focused.]

At the May 11, 1982, hearing, witness No. 2, a welder from the East who also testified behind the screen to protect his indentity, stated that he took tests for other welders at nuclear sites on two separate occasions. On one of these jobs, he said he took 30 tests over a 2-year period. He did so, he said, at the instruction of the welding foreman. He testified that he was not expressly told that the tests were for other persons, but he knew they could be for no other reason because he had to requalify only once every 3 months, for a total of eight tests over the 2-year period.

At the same hearing, another confidential witness, witness No. 1, a welding supervisor who had worked mostly in the Northeast, said he had observed ringers taking the tests for other welders on some 75 to 100 different jobs, including chemical plants, nuclear powerplants, conventional powerplants, and bridges. He also said he had been offered, but had turned down, bribes on every job to allow persons to pass the welding test or allow other ringers to take the test for them. The witness also said that the majority of people actually controlling documents that identify persons for testing were union officials. The following dialog explored this point at the May 11, 1982, hearing:

The CHAIRMAN. The Nuclear Regulatory Commission says that a number is given the person taking the test, and that he retains his number throughout his tenure on that particular job. Would this not be a good safeguard against the compromise of the test?

WITNESS No. 1. We call that either stamps or brass in the industry. Again, it is a matter of follow-up or control. The majority of people controlling the brass or the stamps are the union people, the shop stewards, the general foreman.

The CHAIRMAN. So you are saying there may be some manipulation of those?

WITNESS No. 1. Absolutely.

investigated any of the alleged test cheating incidents, although these allegations had been on the record for no less than 10 months, and in some instances, more than 2 years.

At the hearing on the next day, GAO witnesses testified that the employers they interviewed for their study on worker qualifications in the Pittsburgh area "indicate that they believe it is unlikely for one individual to take a test for another" because welding tests were administered or supervised by company personnel. The GAO added, however, that two of the persons who admitted to test cheating before the committee told GAO in mid-1984 that "cheating on welding tests is still occurring and welders are hired without taking tests. One of the individuals told us that he had, in early 1983, taken a welding test for another boilermaker who was hired by the company as a journeyman welder."

Two utilities who employ boilermakers—Georgia Power Co. and Alabama Power Co.—testified that their companies were satisfied with the referrals they received from the Boilermakers Union. However, the significance of their testimony was limited because both contractors were outside the areas under the staff's study—Pennsylvania and South Carolina. Neither contractor employed boilermakers referred by the two locals under investigation. Also, despite announcements in October 1983 that a final hearing would be held sometime in early 1984, neither company notified the committee of its interest in testifying until 4 days before the hearing, when both utilities did so at the request of the union. The late notification made it impossible for the committee to verify or contest these witnesses' statements.

An issue raised by the hearings that commends itself to further study by congressional committees with jurisdiction over energy matters, is whether public utilities have an incentive to overhire or featherbed under cost-plus-type contracts that yield a greater return on greater overall costs because of the application of a fixed profit percentage to the cost base.

The Georgia Power Co. witness said there were no cost-plus contracts on his system, and the Alabama Power witness said he was not sure about the makeup of his company's contracts. However, two rank-and-file boilermakers, who testified at the hearings, stated that contractor featherbedding under cost-plus arrangements was widespread in the construction industry. Charles Shirley, a member of local 687 in Charleston, SC, who is referred for work out of Pittsburgh local, said:

> The more bodies they (the contractors) have out there, the more money they make * * * I think that is why they tolerate a lot of this (referrals of unqualified persons).

The other witness who addressed this point, Theodore Hull of Cleveland local 744, said that overstaffing was so rife at the Perry nuclear powerplant near Cleveland, when he worked there in early 1984, that his entire crew was told to go to the bottom of the reactor containment vessel and keep out of the way for several days until work could be found for them. During this time he said:

> A lot of guys were sleeping, and a lot were just walking around. * * * A lot of guys were smoking marijuana and I've seen drinking down there.

Finally, Mr. Jones indicated on June 19, 1984, that Bechtel, Georgia Power, Alabama Power, and National Constructors Association wished to testify on behalf of the union's referral practices. In fact, only two companies, Georgia Power Co. and Alabama Power Co., contacted the committee piror to the hearing and time was provided for their testimony, despite its questionable relevance. A third company, Bechtel Power Corp., asked and was given permission to submit a written statement, but company representatives recently contacted majority staff and indicated that they decided not to provide any statement for the record.

Elbaor misstatements.—At the June 19, 1984, hearing, union attorney David Elbaor made numerous misstatements regarding earlier testimony by rank-and-file members on the subject of test cheating. Mr. Elbaor's erroneous statements were of such serious nature that it is important that they be corrected and not allowed to stand unrebutted.

First, Mr. Elbaor stated that welder witness No. 2, from the June 29, 1983, hearing, a witness who testified about faulty welding at the Three Mile Island nuclear powerplant, did not testify under oath. The staff considers this an apparent attempt to discredit the accuracy of the witness' testimony. In fact, the witness was sworn, as is indicated in the printed record of the hearing which had been available for some 6 months [June 29, 1983, hearing record, p. 8].

Second, Mr. Elbaor testified that Gary Boring had retracted his May 11, 1982, testimony regarding bad welds at Three Mile Island. Mr. Boring, in fact, had told the Nuclear Regulatory Commission that he had not been aware of any such welds in the primary systems of Three Mile Island Unit 2, but that he himself had performed faulty welds in the condenser of the plant [June 29, 1983, hearing record, p. 142–145]. Similarly, union president Charles Jones testified erroneously that another committee witness, Charles Shirley, had retracted testimony that he had either taken the welding test for unqualified welders or had seen other persons cheat on the test. Mr. Shirley never, in fact, testified that he took such a test or saw others take it. He said only that he had heard of such practices, so this testimony on that point was never given weight by the majority staff.

Finally, Mr. Elbaor testified that another witness, French Gower, had lied to the FBI regarding his statement in the August 2, 1983, hearing that he took 100 to 150 tests for other persons. Mr. Gower testified on June 20, 1984, that he had never been interviewed by the FBI on that subject. Since the Justice Department has told the committee that its inquiry has not been completed, the only way that Mr. Elbaor could make such a statement as to what an individual has told the FBI would be for him to have access to the Bureau's actual field reports or be informed of their contents by Bureau agents. Because of the seriousness of the charges made by Mr. Elbaor against Mr. Gower and the possible criminal violations involved, Mr. Elbaor was asked whether he possessed a copy of an FBI report on Mr. Gower. He responded that he did not.

Rank-and-file union members have often indicated their reticence about cooperating with the Bureau out of a fear that their names would be leaked to the union and consequently they would be subject to retaliation. Since it appears that, in this instance,

they would pay upward of $500 to $1,000 for them [May 13, 1982, hearing record, p. 199].

If persons holding Whritner's books could not obtain boilermaker journeyman referrals, it is difficult to understand how Whritner was able to realize in excess of $200,000 through the sale of fraudulent union memberships, the figure supplied the committee by U.S. Postal Inspectors. Also, Messrs. F.D. Hall and Glenn Bowser were able to obtain boilermaker referrals on the basis of their cards although they did not meet the 8,000 hour or apprentice training requirement. Jones' statement about a journeyman's card not leading to journeyman's pay is further contradicted by the employer statements on page 9 of this report.

OTHER ISSUES

Other issues at the Boilermaker hearings included allegations that officials of local 154 required members to buy raffle tickets under threat of firing, and that a portion of members' salaries was deducted for a vacation fund and lent back to members at 18-percent interest.

50-50 raffle.—At the May 11, 1982, committee hearing, Gary Boring testified that officials of local 154 required all workers, including transients, to purchase five raffle tickets, at $1 per ticket, for each week that they worked out of the union. The raffle tickets were known as the 50-50 raffle because 50 percent of the proceeds were to be paid out to participants and the other half was to go into the local's welfare fund.

At the May 11, 1982, hearing, witness No. 1, a confidential behind-the-screen witness who was a welding supervisor, testified that the forced sale of such tickets was widespread at construction sites throughout the union, and that: "It is well known, if you do not buy them you are not going to be on that job very long." At the committee's August 2, 1984, hearing, French Gower, a member of the National Transient Division who gets most of his referrals from local 154, said that he was fired from a job in 1980 for refusing to buy the tickets. On June 20, 1984, Joe Danko, a member of local 744 in Cleveland, said he also had been fired for refusing to buy raffle tickets.

former rank-and-file witnesses in touch with the
told the staff that forced sales of 50-50 tickets had
154 as a result of the 1982 committee hearings. At

the June 29, 1983, hearing, John Fleck, a member of local 154, and Bruce Lawson, a member of Charleston, SC, local 687, who gets his referrals from local 154, testified to that effect. Fleck said: "They do not ask you now (to buy the tickets). Years ago, they used to just staple them on your check." At present, the staff was unsure whether the practice had ceased in local 744, however.

Vacation fund.—At the June 20, 1984, committee hearing, Joe Danko testified that in Cleveland Local 744, $1 an hour of employees' gross wages was automatically deducted for a vacation or savings plan which could be lent back to the employee at 18 percent annual interest. For a period of time prior to the money's deposit in the employee's account, Danko said, the employer and the local

would earn interest from the employee's money. Following are excerpts from Danko's testimony:

Mr. DANKO. They have what they call a vacation plan or savings, whichever the case may be.

The CHAIRMAN. What does that mean?

Mr. DANKO. In Cleveland it consists of $1 an hour which is put into the bank for you. You have nothing to say about it. It is automatically taken.

The CHAIRMAN. Well, isn't it ultimately put into your own account, though, after about 30 days?

Mr. DANKO. After 30 days, yes, sir.

The CHAIRMAN. Well, then, what's wrong with that, if they are causing you—I agree, they shouldn't have to force you to save or——

Mr. DANKO. This, in itself, there is nothing wrong with it providing it was done the way it was supposed to be but, by the same token, this can amount to hundreds of thousands of dollars which the company that you're working for holds, gets interest off of it during that period of time. They in turn turn it over to the local, which takes another 15 days that this is deposited in their account. They get money off of this before it is put into your account. Now Cleveland——

The CHAIRMAN. But can't you take it out of your account after 30 days?

Mr. DANKO. It never all gets in there in that period of time. In other words, if the pay period ends in the middle of the month, say from the 15th of May, this will go in the 15th of June and anything worked from the 15th of June will not go in until the 15th of July.

The CHAIRMAN. How long a time has to expire before you can take that out?

Mr. DANKO. I would say in order to get everything that you work, most of these jobs as a general rule will last 6 or 8 weeks. They are repair jobs. Some will go possibly 12 weeks. You have to wait at least 5 months if you want to get all of it.

The CHAIRMAN. I see. Now you tried to borrow on one of those accounts, and I think that was in Chillicothe?

Mr. DANKO. This is the Brotherhood Bank in Kansas City. I believe it is probably owned by the International. Certain locals will take, deduct this money from you. It goes into the Kansas City bank. You only get this once a year, unless——

The CHAIRMAN. In other words, you wait for 12 months——

Mr. DANKO. That's right, unless you request it. Then if you request it they give you your money in the form of a loan on which you pay 18 percent interest.

The CHAIRMAN. In other words, they deduct this money from you once for every hour you work——

Mr. DANKO. That's right, sir.

The CHAIRMAN [continuing]. They put it into, I guess, a savings or a vacation fund——

Mr. DANKO. More or less, yes.

The CHAIRMAN [continuing]. Which they then put into a bank, which you have difficulty getting out much shorter than 5 months even though the job only generally lasts 6 weeks or so.

Mr. DANKO. That's right.

The CHAIRMAN. And in this particular case in Kansas it would take you a year to get it out, and if you tried to take your own monies and borrow against them, they would charge you 18 percent interest.

Mr. DANKO. That's right, sir. Unfortunately, I forgot to bring them, but I have papers to substantiate this.

The CHAIRMAN. What happens? Do they ever deny you the right to borrow your own funds?

Mr. DANKO. It depends on the business agent if he don't like you, he don't have to okay it.

The CHAIRMAN. If he doesn't what happens then?

Mr. DANKO. Well, then, you just wait, you don't get your money.

The CHAIRMAN. So you wait for about a year then?

Mr. DANKO. That's right.

The CHAIRMAN. But you ultimately get your money?

Mr. DANKO. Oh, you would get it ultimately, yes.

The CHAIRMAN. But if he approves it you are going to pay 18 percent interest just to use your own money?

Mr. DANKO. That's right.

The CHAIRMAN. That doesn't seem right to me.

Mr. DANKO. It isn't right.

Mr. Danko was the only witness at the Boilermaker hearings to testify on the subject of the vacation fund. It is unclear whether the fund involves the international or only local 744. At any rate, Mr. Danko's allegations should be thoroughly investigated by the Department of Labor, which has jurisdiction over issues involving union pension funds.

OPERATING ENGINEERS INVESTIGATION

Witnesses in the operating engineers hearings testified to a broad pattern of abuses by local business agents in Lake Charles, LA, and Cleveland, OH. The Lake Charles allegations included job referrals of unqualified women equipment operators in return for sexual favors, extortion of rank-and-file members for contributions to the business agent's legal defense fund, payroll padding, job discrimination, and extortion of contractors. The Cleveland allegations centered on job discrimination and questionable use of union funds. Officials of Lake Charles and Cleveland locals, and the president of the international, J.C. Turner, turned down the committee's requests that they testify at the hearings.

LAKE CHARLES INVESTIGATION

Sexual favors.—One Louisiana witness testified directly and another submitted an affidavit that they had been referred to jobs at chemical plants without the requisite journeyman experience [4] in return for sexual favors granted to Willard Carlock, Sr., business agent of local 406 in Lake Charles, LA.

At the February 28, 1984, hearing, a behind-the-screen witness testified under oath that Carlock referred her to a job at the Olin Matheson Chemical plant in Lake Charles in August 1978 in return for sexual favors. "He told me if I wanted the job, this is what I would have to do," she said. She said she submitted to Carlock's demands "because I needed a job. I had a family to raise, and I had never made money like that in my life, and I just couldn't pass it up."

The confidential witness said she received a second referral to the Olin plant in the fall of 1978, again in return for a sexual favor to Carlock. She did not sign the out-of-work book for either referral. On the first referral she was paid $7 an hour, but on the second she received the full $11 an hour journeyman's wage. Her previous experience had been as a waitress, and she had no experience operating heavy construction equipment. She said her job at the Olin plant was to turn on the welding machines in the morning, turn them off at the end of the day, and fill them up with gas if that was needed during the day. She was laid off in October 1978 and began studies to become a beautician.

Similar testimony came in a sworn affidavit submitted to the committee on May 22, 1984, by Beverly Edwards of Sulfur, LA. Edwards said she had lived with Carlock for some years and was given her choice of job referrals by Carlock in return for sexual favors. She said that on various referrals to chemical and coal

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[4] Generally, a 4-year apprenticeship or agreement by both contractor and union, following on-the-job training, that a person deserved journeyman status and pay.

plant projects she observed theft by workers, and workers sneaking away from the job but getting paid full wages. She was not a union member and had no experience. Typically, she said, she worked no more than 4 hours of her 8-hour shift, but routinely received journeyman's pay for a full 8 hours.

Two other women without operators' experience testified before the committee on February 28, 1984, that Carlock referred them to journeyman jobs without their signing the out-of-work list. Both witnesses, Cheryl Alexander and Janice Maxey Green, testified that Carlock sought sexual favors from them but they did not comply with his wishes.

Alexander testified that on her first job, in 1978, at the T.L. James Chemical plant, she was referred as an oiler but, as it developed, "I sat under the shade tree to stay out of the sun, and that is it." She testified that when she asked her job foreman what she was supposed to do, he said: "Nothing. Just don't fall asleep, because if the company personnel come by, they would be rather upset if you did." When she got tired of sitting under the tree, she said, "she just got up and walked around."

On later referrals between 1978 and 1983, Alexander said she "came and went as I pleased," but always received full pay. "There were a lot of days I didn't work, or I would decide at noon or whatever * * * that I wanted to go to the hall, and I left." In socializing with Carlock at the union hall, she said she observed extensive abuses of the referral process, including out-of-sequence referrals for Carlock's friends and referrals of "the scrounge of what was left" for contractors that were out of favor with him. During the 1978–1983 period, she said Carlock made "very many overtures" to her about having sex with him, but she always refused. In November 1979, about a year and a half after she started work, she said Carlock became "irritated with me because I wouldn't have sex with him." So she then entered a training program in order to avoid being laid off. For a time, Carlock's sexual overtures to her ceased, but they were to resume again later. Finally, in 1983, she left the union after Carlock told her, "I wasn't taking care of him, so why should he take care of me?"

Janice Green, the other witness who testified on this subject, said Carlock hired her for a journeyman position in August 1980, "without any experience whatsoever." On her first day, Green said, Carlock made suggestions that he expected a sexual favor, but she resisted him and offered to return the referral if such strings were attached. She said Carlock let her have the job anyway and sent her to the Pullman-Kellogg liquid natural gas plant in Lake Charles, where she worked as a unit operator maintaining welding machines and diesel water pumps. She said she had 2 to 3 hours a day free time, during which she would "sit in my shack and read books." She continued on the job until February 1981, when she was laid off by Pullman-Kellogg.

Job discrimination.—Howard Taliaferro, a veteran equipment operator with 18 years' service in local 406, testified on February 28, 1984, that while inexperienced women operators were getting referrals for sexual favors, or in anticipation of such favors, journeymen such as himself were not being referred for work. Taliaferro said he could not get referrals for some 15 or 16 months commencing in

1981, because he had angered Carlock. Taliaferro said he followed the out-of-work list carefully and on one day when he thought his name was coming up to go on a pipeline job at Jennings, LA, he went to the jobsite and "found five or six operators on the job that had never signed the out-of-work list." Taliferro said he provided the names of these operators to the National Labor Relations Board in New Orleans, but that the NLRB dismissed his complaint without even interviewing any of the other operators. Taliaferro said the NLRB investigator told him: "We just don't have the gas or the time. You're causing me a lot of trouble." Taliaferro also submitted affidavits from 10 other journeyman operators alleging job discrimination in local 406.

CARLOCK DEFENSE FUND

Four rank-and-file members of local 406 testified that Carlock or his associates required them to make payments to a legal defense fund for Carlock as a condition of their continued employment. Three other local 406 members submitted sworn affidavits to that effect.

Witnesses said the fund initially was raised to pay Carlock's legal expenses regarding investigations of Carlock's alleged involvement in labor violence at Ellender Bridge and the Jupiter Chemical plant in the mid-1970's. Witnesses said the collections were never voluntary and that they continued for at least a year after an announcement had been made by the statewide business agent of the operators that Carlock's legal expenses had been paid off. Following are excerpts of witness testimony regarding contributions to the fund: All testified or submitted affidavits on February 28, 1983, except James LeDoux who appeared before the committee on May 22, 1984.

Gene Barr, a veteran operator, said that in late 1977, he, along with 14 or 15 other operators, attended a meeting in which Mike Scimemi, a close associate of Carlock's said: "Carlock needed us all to donate a certain amount of money for his attorney's fees." Barr said that Scimemi told them that if you will all do this for Mr. Carlock, you'll never have to worry about a job. Scimemi asked for $1,500 from each member. Barr borrowed the money from Finance Service Co. of Lake Charles and give it to Carlock. A check issued by the finance company and dated November 16, 1977, was endorsed by both Barr and Percy Foreman, Carlock's attorney. According to documents provided the committee, eight other operators borrowed similar amounts from the same company on November 16 or 17, 1977, and made the payments to Carlock. All the check stubs were endorsed by Percy Foreman, with the exception of one check that was endorsed by Willard Carlock, Sr. The checks totaled $14,556.

Alton Janise of Lake Charles, who was hospitalized at the time of the hearing, submitted a sworn affidavit stating that he was approached by Ronnie Leger, an associate of Carlock's, and told to contribute to the Carlock fund. At this time, mid-January 1979, Janise was a steward for Weiss Construction Co. at the Olin Matheson jobsite in Lake Charles. Janise said he collected about $800 in cash from his crew and gave it to Carlock, together with his wife's

personal check for $50, on January 21, 1979. A copy of the Janise check, endorsed by Carlock, was furnished to the committee.

John Sylva testified that he contributed $400 to $500 in cash to the Carlock defense fund over a 9-month period in 1979 and 1980. Sylva said he did so at the request of Houston Byrd, foreman on the Pullman-Kellogg job at Lake Charles, who told him: "You pat the man's back, he's going to pat yours." Sylva said Byrd collected $12.50—1 hour's pay—from him each Monday morning over the 9-month period. Sylva said contributions were made regularly by at least 100 people in his immediate work area.

Janice Green, who also worked on the Pullman-Kellogg job in 1980, testified that Houston Byrd also approached her about contributing to Carlock, and that she gave his $25, which she thought would be a one-time contribution. But the next week he approached her again, and she again gave $25. In the third week, Bryd approached her again, but she resisted. She said Byrd then told her: "Willard Carlock got you your job. Willard Carlock can take it away." She never contributed again and was laid off in February 1981.

James LeDoux testified that he contributed $150 to Carlock's defense fund in 1979 and 1980 on the understanding that if I would contribute the money to Willard Carlock and his cronies, I would stay on the job longer; I would have better working conditions.

Other sworn affidavits on the defense fund were submitted to the committee by Jess W. Rowsey and Lee Savoie. Rowsey stated that he paid at least $140 into the defense fund and that he witnessed the statewide business agent, Peter Babin II, making a statement to the local in April or May 1979, that the defense fund had been paid in full and that there was no need for further collections. However, Rowsey said attempts to collect money for the fund were still being made as late as 1980. Savoie stated that Nathan Courville, a local 406 steward, forced him to contribute $100 to the fund, even though he had not worked for 4 years, had been hurt, and could not afford to give money.

Grand jury.—In 1981, a Federal grand jury in Lafayette, LA, took testimony about the Carlock defense fund but did not return indictments. Green and Sylva, who had been witnesses before the Lafayette grand jury, told the committee on February 28, 1984, that numerous other potential witnesses before that jury appeared to be intimidated by the access of outsiders to the grand jury room.

Green said that Frank Salter, a lawyer perceived to be Carlock's attorney, was asking witnesses how they had testified as they went out into a hall in full view of persons still scheduled to testify, Salter told the committee later that he had never represented Carlock; however, the perception that he did could have had a chilling effect on grand jury witnesses, Salter should not have been allowed to debrief witnesses in view of others yet to testify, Green also said that

> A lot of people at this hearing were pressured before they came to this hearing that if they testified against Carlock, they would lose their jobs and that they would never work again in Lake Charles.

Sylva said he also was questioned by Salter but told the lawyer that what he said was "none of your darn business." Sylva said

that while he was seated in the corridor close to a pay telephone, he also noticed that C.J. Laird, assistant business agent to Carlock, "kept calling that number and asking different people to come to the phone." He said that one person phoned by Laird hollered out quite loudly, "C.J. I'm not about to commit perjury for anyone."

At the committee's hearing on the day following Sylva and Green's testimony, Stephen S. Trott, Assistant Attorney General, Criminal Division, U.S. Department of Justice, testified that the local 406 investigation would be reopened by the Justice Department based on the testimony from the previous day's hearing. Trott said:

> Watching the information that you have developed, it has become absolutely crystal clear to me that the predicate on which this investigation involving the defense fund was closed may very well have been defective and influenced by an obstruction of justice in subornation of perjury. I have determined that this investigation shall be reopened and shall be carefully examined in that respect. We intend to pursue this vigorously and get to the bottom of it.

Payroll padding.—At the May 22, 1984, hearing, a panel of witnesses from both the union and contractors testified that union corruption and company mismanagement led to massive cost overruns on a construction project at the Roy S. Nelson electrical generating station, unit no. 6, in Westlake, LA, near lake Charles.

The committee's investigation focused on the plant's coal-handling facilities, constructed between 1979 and 1981, by Pullman-Torkelson Co., under subcontract to Bechtel Power Corp., the prime contractor for the Nelson plant. The committee staff reviewed but did not release a 700-page report on a joint Bechtel-Gulf States Utilities audit of Pullman-Torkelson's $43 million claim on what was to be $11 million in subcontracts. To its credit, Gulf States agreed to pay only a little over $3 million of the overrun, based on legitimate claims. Pullman-Torkelson was the main victim of the alleged union corruption and had to consolidate with another company, Wheelabrator-Frye, Inc., due to the staggering losses it incurred on the Nelson project. Following are excerpts of the sworn testimony by union members and company officials on the Nelson cost overrun:

Charles Lovett, a 21-year veteran of local 406 who was job steward for Bechtel at the Nelson project between November 21, 1978, and January 29, 1982, testified that operators favored by Carlock were able to come and go as they pleased, were paid unnecessary overtime and were paid even though they would be "as far as 500 miles away on hunting and fishing trips, sometimes with the business agent." Lovett said some of these individuals were able to get paid at the same time on multiple company payrolls that yielded them as much as 1,200 hours pay per month. Following Lovett's testimony, the chairman and ranking minority member of the committee wrote the international's pension fund a joint letter requesting pension records of 61 individuals named by Lovett as being paid for "no show" jobs, or as it is sometimes called, "ghost employees." The pension fund complied with the request, and an evaluation of these and various company records was under way at the time of the preparation of this report.

Lovett also testified that incidents of sabotage occurred on the Pullman-Torkelson jobsite in order to prolong the job and keep the

operators working. He said certain operating engineers loosened the clamps on the freezing unit that kept the sides of the coal storage hole from collapsing. Once they were loosened, the hole collapsed, and the job was delayed for a 2-year period, he said. Lovett also testified that Pullman-Torkelson was coerced into renting an inoperable bulldozer from Cat-Low Equipment Co., a firm owned by Willard Carlock, Jr., at a cost of about $144,000 in 1979 and 1980. Lovett submitted documentation that Pullman-Torkelson paid more than $25,000 to repair the bulldozer on December 17, 1979. He said that, to his knowledge, the bulldozer was never used on the Pullman-Torkelson job. Lovett said that Pullman-Torkelson officials gave in on the equipment rental under severe threat and intimidation from the union. He said they feared that had they not rented the bulldozer from Cat-Low, every piece of equipment on the Pullman-Torkelson job would have been sabotaged as it came on the job. It is just that simple.

Lovett also confirmed characterizations by Pullman-Torkelson officials in the Gulf States audit report that Pullman-Torkelson was overstaffed by at least 100 percent on the job, that craftsmen played basketball on a double-time day, and that workers gambled and drank routinely on the job, left the job at early hours and still got paid for the full 8 hours.

Elmer J. Richard, field office manager and field purchasing manager for Pullman-Torkelson on the Nelson job from July 1979 to February 1980, testified to ghost hiring and "frequent irregularities" in timekeeping that led to overpayment of union members. Richard said there were at least 10 ghost employees on the job during his tenure as office manager. In lieu of sending out an oiler to assist the operator in maintaining equipment, Richard said he would get a referral slip with a name and Social Security number and would be approached by the operators' master mechanic, Ronnie Leger, with the assurance that the operator would take care of the maintenance on the unit, but that he wanted to put the oiler's name on the payroll anyway. "In order to complete the tie-in for payroll purposes," Richard said: "I would have to make sure that the timekeeper was aware of it and also that the payroll clerk was aware of it and we also tried to maintain a low-key attitude toward this—no publicity, if possible." Richard said he was told by his superior, the field superintendent, to go along with the union's payroll claims. Richard said the company felt that had they resisted, "we would have seen a marked difference in their performance in the field * * * they would have definitely retaliated." Richard said that while the Operating Engineers Union was the only union that "ghosted," others were overstaffed and were paid excessive overtime. He said these were the Teamsters, Iron Workers, Carpenters, and Laborers.

A statement for the record from David Atkins, construction coordinator for Pullman-Torkelson on the coal-handling contracts between January 1, 1980, and April 1, 1981, made allegations similar to those of Lovett and Richard. Atkins had planned to testify at the hearing, but was detained on business in Lake Charles, so his statement for the Gulf States audit report was placed in the record with his permission.

Atkins said that for all practical purposes, the craft foremen were writing payroll checks on the job. He said that by the end of February 1980, actual labor costs were running two or three times above his estimates. He attributed this to overstaffing by the Carpenters, Laborers, Iron Workers, and Operating Engineers Unions. He estimated that one of the Pullman coal-handling jobs was 30 to 35 percent overstaffed and the other was 50 to 60 percent overstaffed. Atkins said: "The operators had thoroughly intimidated Pullman supervision and were featherbedding the job, overstaffing it, and not cooperating with the contract."

John Fruge, a member of local 953 of the International Brotherhood of Carpenters & Joiners of America, testified to extensive abuses by both Carpenters and Operating Engineers Unions on the Pullman-Torkelson coal-handling jobs.

Fruge, who served as carpenter steward on Pullman's active storgage substructure from July to October 1979 and later as superintendent for Loftin Construction Co., a subcontractor on Pullman's car rotary dumper hole project, said he found on the first job that the carpenters were 30 to 40 percent overstaffed. With Loftin, he supervised operating engineers and said they were at least 50 percent overstaffed. When he attempted to cut back the unnecessary operators, he said he was told: "If you don't keep these people on, the pumps are going to break down, the weather machines won't run. You'll encounter these things. So the people might as well stay on the job."

Fruge said the Carpenters Union referred numerous unqualified people to the job, including the daughter of Robbie Carlysle, the general foreman on the rotary car dumper hole project, and the secretary to the sheriff of Lake Charles, Wayne McAlvin. He said Carlyle's daughter might work 2 or 3 hours a day—always at paperwork—not carpentry—or might take off a week at a time, but would always be paid full time or overtime. Throughout this period, Fruge said: "They had qualified carpenters sitting on the bench at the halls, and they would stay there because the unqualified people would stay on the jobs because of their connections with the business agent or family ties."

Fruge said that while he was a carpenter job steward in charge of incoming materials and supplies, Carlysle told him to make all his lumber purchases from a supply company owned by Carlysle's father-in-law. After awhile, Fruge noticed that Carlysle was ordering an excessive volume of material, which he soon learned was being delivered to the site of a house that Carlysle was building. When Fruge complained about this practice to the general foreman, he said his responsibilities as materials coordinator were taken away and given to the Teamsters. He said he later learned that another union official, Ronnie Cannon, the business agent, was building his house with Pullman-Torkelson materials. Fruge said he eventually checked invoices on all the incoming materials and estimated the company's losses due to theft of these materials at anywhere from $250,000 to $400,000 of which about $100,000 went for Carlysle's house. He said Carlysle also was using carpenters to build his home while they were being logged in and paid on the Pullman-Torkelson payroll.

James LeDoux, a member of local 406 of the Operating Engineers Union, testified that he was asked to participate in the sabotage of the coal-storage hole, which added an additional period of up to 2 years to the Pullman-Torkelson job. He said Mike Greer and Willard Carlock, Jr. asked him to go down into the hole and loosen some clamps on some rubber hoses of the terra freeze unit so that the brine system would leak and the hole would thaw and eventually collapse. He said he refused to do it, but that the project was sabotaged the next night anyway. LeDoux also testified that the operators on the Pullman job often played cards or basketball, drank, and engaged in sex at the operators shack during working hours. LeDoux said the windows on the shack were painted black because "they didn't want people to see what was going on inside." Once, he said, he personally caught this operator and this girl in one of our shacks—they had the door locked. He said the operators used the shack for sleeping and playing cards as well as for sex.

Extortion of contractor.—A far-reaching scheme of sabotage and extortion on the part of Willard Carlock was alleged at the February 28, 1984, hearing by Ann Blackwell, construction manager for Mar-Len of Louisiana, a civil and underground building contractor that employs members of local 406 of the Operating Engineers Union.

Blackwell said her primary experience with the operators was on two projects—a $5 million fire protection installation on the U.S. Department of Energy's strategic petroleum reserve project at West Hackberry, LA, and a paving project on Maplewood Drive in Sulfur, LA.

Blackwell said that the West Hackberry job, which had been scheduled for completion on January 30, 1982, was delayed for 6 months because of "continued equipment failures, part of an apparent scheme by the operating engineers to extort me." She said there were work slowdowns, faked illnesses, and bomb threats. At one point, she said the operators all left the job because they said they got sick from the drinking water; however, affidavits submitted into the record and one direct witness, Truman Johnson, an operator on the West Hackberry job, stated that there was nothing wrong with the water but that operators were told to go home in protest against Blackwell's firing of the master mechanic's son for speeding on a piece of construction equipment.

Blackwell said that in order to get her to rent construction equipment from Tri-Coast, a company in which she believed Carlock or other union officials had a financial interest, operators on the West Hackberry job began to systematically destroy her equipment. According to an affidavit by Tracy Willard, a local 406 operator who served as Blackwell's equipment superintendent: "Operators were deliberately tearing up Mar-Len's equipment. The local 406 master mechanic, Mike Scimemi, was directing this. They were burning up starters, getting sick and going home, sending oilers that were not needed."

Blackwell also submitted an affidavit by Richard D. Hambrick, the head of her field engineering crew, stating that Scimemi deliberately cut the site's main instrumentation cable in November 1981. "Scimemi was operating the machine when the cable was

cut," Hambrick said. "Many times operators cut cables like this one that were very plainly located. Some of them that were actually exposed were cut." Repair of the main cable cost her company between $30,000 and $60,000, Blackwell said.

After incurring about $100,000 in overall equipment repair costs, Blackwell said she was told by Mike Scimemi that she might try renting equipment from Tri-Coast even though she already had the same equipment in her own inventory. In all, she rented seven or eight pieces of equipment from Tri-Coast, at a cost of about $100,000. Yet in every instance, she already had equipment that she considered superior to those pieces provided by Tri-Coast. She said sabotage to her equipment stopped once she started renting from Tri-Coast. "I learned through trial and error that the only way I could keep a piece of Mar-Len equipment running was to rent a sufficient number from Tri-Coast," she said. Although Carlock was not listed as an owner of Tri-Coast, Blackwell said: "Carlock would come out to the job and he just quite frankly acted like he owned Tri-Coast. * * * From all his actions and dealings out at Hackberry at that time he obviously had an interest in that company." Blackwell said Carlock would come out every 3 or 4 days after I started renting Tri-Coast equipment, and asked me was all my equipment running all right, and kind of suggesting I might need another piece. She said Carlock never told her he owned Tri-Coast but did tell her quality assurance manager, William Bonvillain, that Mar-Len should be renting from Tri-Coast to avoid having equipment breakdowns. Blackwell also submitted affidavits of three workers that tended to link Carlock to some financial interest in Tri-Coast. The affidavits stated as follows:

Rick Cardenas, a Tri-Coast truckdriver, stated that Carlock would stay in the Tri-Coast offices nearly every day and use local 406 operators to rig out tractor-trailer rigs owned by Carlock and put them to work for Tri-Coast.

Charles Shoemaker, a Tri-Coast office manager, stated that Carlock spent 5 or 7 hours a week at the Tri-Coast offices and that Carlock gave the Tri-Coast president blank referral slips that had been signed by a union representative.

Newell K. Guillory, a local 406 operator, said that Tri-Coast paid less than union scale to some operators from local 406. He said he was given orders repeatedly by Carlock to do Tri-Coast work and never paid union dues or assessments while he worked at Tri-Coast.

Blackwell said she went through a long struggle with Carlock over her intentions to fire Scimemi and hire a master mechanic of her choice, as specified under a written agreement with the union. After she finally fired Scimemi, local 406 operators refused to work for a 3-week period, and Carlock demanded that Mar-Len terminate Blackwell as a condition for the replacement of Scimemi. Finally Mar-Len officials contacted headquarters of the international and the dispute was resolved in Blackwell's favor.

On Mar-Len's other project, the Maplewood paving job, Blackwell said the union forced her to hire three ghost employees as oilers—employees Gia Marie O'Quinn, Rene Mancuso, and Margaret Barnes. With respect to Barnes, Blackwell provided pay records showing she was paid during the same period of time in 1980 by

both Tri-Coast and Mar-Len. Blackwell submitted an affidavit from O.T. Fisher, foreman on the Maplewood project, attesting that the three oilers were sent to the project by Garland Davidson, president of Tri-Coast, and that the three showed up for work rarely, if at all.

Blackwell introduced a July 18, 1983, letter she wrote to J.C. Turner, president of the international, revealing her problems with local 406. Blackwell testified, and union attorneys confirmed to the committee staff, that the letter was never answered. The attorneys stated Turner did not want to prejudice pending litigation between Blackwell and union officials in regard to these matters. Blackwell said she received one call from the local FBI agent, but that he never followed up with an interview. On the day following her testimony, however, Assistant Attorney General Stephen Trott pledged to investigate Blackwell's charges as well as those regarding the Carlock legal defense fund, and she was interviewed by the FBI when she returned home from the hearing. Department of Energy investigators also visited Lake Charles and conducted interviews prior to Blackwell's testimony in Washington, but told both Blackwell and the committee staff at the time of the hearing that their investigation was still ongoing and that they could not release any documents or make any statement at that time.

CLEVELAND INVESTIGATION

Witnesses from Operating Engineers Local 18 in Cleveland testified on February 29, 1984, to a longstanding pattern of employment discrimination and misuse of funds by union officials.

Prof. Stephen W. Gard, of the Cleveland-Marshall College of Law, an attorney for members challenging the union leadership, testified to "a long and unfortunate history" of abuses in local 18, including the fact that local 18 was a focal point in the original investigations conducted by the Senate Government Operations Committee under the late Senator John McClellan in the 1950's. Despite court judgments against the local, Gard stated that the union was still discriminating against members. As recently as 1984, Gard said, Murphy had been denied his right of electoral participation as required by a court order in *Murphy* v. *Local 18*. And in addition, Gard said he believed there had been repeated violations of fiduciary obligations under 29 U.S.C. 501 of the Labor Management Reporting and Disclosure Act. A large number of favored members were still being carried on local 18's membership roll, Gard said, even though the members had been in substantial arrearage on their dues. Thus local 18, he said, became obligated for a per capita debt tax to the international for those members. "This is a substantial sum of money which has been lost to the members of local 18 as a result of the failure to properly account within the union, by the union leadership, in a proper manner," Gard said. Gard also testified that in 1982, local 18 made a political contribution of $15,000 to Richard Celeste, a candidate for Governor of the State of Ohio. He said the contribution was made out of the general fund and not the political action fund and was not specifically authorized by the membership of local 18. "This," he said, "would be a violation of the union's fiduciary obligations to its member-

ship," although it apparently did not violate Federal and State election laws.

Gard said another abuse in local 18 was employment discrimination. After Murphy had become a dissident in 1970, he worked only about 200 hours in 1971, not at all in 1972, 2 weeks in 1973, not at all in 1974 through 1977, 4 hours in 1978, and not at all in 1979. By contrast, Gard said, James Nebitz, who had no operators' experience prior to his marriage to a union official's daughter on November 18, 1978, received "extraordinary treatment through the union referral system." Gard said that prior to June 1978, Nebitz had no hours in the union. From June 1978 to June 1979, he had 1,500 hours. From June 1979 to June 1980, he worked more than 2,000 hours. From June 1980 to March 1981, he worked over 1,300 hours. From March 1981 when his marriage ended in separation and divorce, he worked zero hours and never got another referral from the local.

Gard said that although Murphy finally won an employment discrimination lawsuit against local 18, it took him 9 years of lost earnings—from 1973 to 1982—to do so, and that he was not sure the judicial remedy was totally effective. Gard said new Federal legislation was necessary to expedite requirements, including the attachment of recording devices to specifically designated dispatch telephones within union hiring halls so that it later can be determined whether a worker has been discriminated against. He said the NLRB's primary responsibility was to deal with collective bargaining and that "they have neither the resources nor the time to deal with the problems which are had by individual members who are discriminated against in referrals. These people need a remedy." Despite various safeguards of the court order in the *Murphy* case, such as a requirement that Murphy be able to inspect the out-of-work referral deck, Gard said he suspected that union officials were using their influence "which is quite large with contractors" to persuade contractors to request certain individuals, or not request certain others, for their jobs. Such "steering" of job referrals should be made illegal as well, he said. Gard also said additional safeguards would be necessary to detect individual abuses because within local 18 alone, there were 14,000 to 16,000 members, each of them qualified to operate different kinds of machinery. "Therefore, unless we have complete oversight of the union, sheer complexity of the referral system makes it almost impossible to discover each individual abuse," he said.

Ervin Shimman, a veteran member of local 18, said he, like Murphy, had become a victim of employment discrimination when he began criticizing the actions of local 18 officials in the early 1970's. He said that although he had been in the union for 38 years, he had only attained pension contributions of $12,845 as of July 1, 1983. He said workers with only 16 or 17 years experience had two to three times his pension accumulations, indicating they work much more often. Shimann also said 2,000 favored individuals had been carried on the books as active members at a cost of $300,000 for the international per capita debt tax. Yet he said that any dissident who gets behind in his dues is expelled immediately. He cited the example of Robert Crockwood of Toledo, "who was ex-

pelled as soon as he got behind in his dues because he was a dissident."

Another abuse alleged by Shimman was that a 1982 Cadillac automobile was transferred to Earl Ervin, the outgoing business manager of local 18, without notice to or approval by the union membership. The transfer was documented at page 9 of local 18's 1982 LM-2 report to the U.S. Department of Labor. The car's net book value at the time of transfer was placed at $20,281.

William Murphy reiterated his discrimination problems as described earlier by Gard, and, along with Shimman, expanded on Gard's apprehensions that the union was urging contractors to request operators favored by union officials. This was now "open to extraordinary abuse," Murphy said. Murphy and Shimann said that in the spring of 1983, Rollo Zoll was referred as a master mechanic on the Tibitz Co. job at Lima, OH. However, the union mounted an extensive campaign to discredit Zoll and to get the employer to name Bob Hedges as master mechanic. Zoll angered the union by refusing to get the contractor to request favored operators for the Tibitz job, Shimman said. The company held fast in this case and retained Zoll. Continuing on the subject of "steering," Murphy said that at prejob conferences, the union agents talk to the contractor, and it just happens that their supporters happen to get these jobs. But Murphy said that on a recent trip to the union hall, he observed that an individual who was out of favor with the union leadership was not referred although he was specifically requested by an employer. On other matters, Murphy testified that he had been fined and suspended for his dissident activities and had twice been physically beaten by the union leadership.

RECOMMENDATIONS

Based upon a review of the 10 days of hearings concerning the practices of several local lodges of the International Brotherhood of Boilermakers and the International Union of Operating Engineers, the committee's majority staff makes the following administrative and legislative recommendations:

One, the Boilermakers Union has included in its collective bargaining agreements a requirement that only individuals who possess 8,000 hours in the trade or have completed an apprenticeship program can be placed on the out-of-work list, be referred for work and paid at the journeyman rate. According to the union's own documents, this standard was adopted by a majority of boilermaker locals to ensure a minimum level of competency in the trade. Nonetheless, individuals who do not possess these qualifications have been referred for work as journeymen. At the same time, union members out of favor with the union leadership have had the rules applied strictly and have not been referred despite their qualifications. Efforts should be made to ensure that qualification standards are imposed uniformly and are not manipulated to punish dissidents or protect local leadership.

Two, employers associated with electric utility or Government construction projects should pay workers in accordance with collective bargaining agreements when such an agreement exists: to vio-

late the agreement is to overcharge the ratepaying consumer or taxpayer.

Three, legislation is needed to require contractors to certify that workers are qualified for the journeymen positions to which they are referred in the Nation's key industrial facilities. The current referral process, in which qualification records are not always kept, is tantamount to a State police department issuing driver's licenses without proof of a driver's test or a university graduating an engineer without proof that he or she passed calculus. Must we wait for a major accident caused by a bad welder doing a bad weld before we take the necessary action to ensure the public safety?

Four, the welding tests administered to boilermakers by their employers are subject to compromise. For their own protection, employers should be more vigilant to police such tests and report any abuses to local authorities or, with respect to nuclear powerplants, to the Nuclear Regulatory Commission. New legislation is needed to make test cheating or extortion to compel test cheating a Federal offense.

Five, NRC should require all contractors at nuclear construction sites to institute positive photo identification systems to guard against cheating on welding tests.

Six, witnesses at the boilermaker hearings documented several instances of illegal boilermaker membership sales; the union itself reported such sales of fraudulent books by a person not affiliated with the Boilermakers Union. The fact that such an imposter could operate illustrates the existence of a market for the illegal sale of boilermaker books. The FBI should expedite its current investigation of such illegal practices, which constitute the first link in referrals of unqualified persons to construction jobs.

Seven, the Department of Labor should investigate allegations regarding forced contributions to a Boilermaker Union vacation fund which are allegedly lent back to union members at 18 percent interest.

Eight, a broad pattern of corruption including extortion, payroll padding and job discrimination has occurred in Operating Engineers Local 406 in Lake Charles, LA. The Department of Justice should expedite its efforts to bring these matters before a Federal grand jury for disposition.

Nine, a pattern of job discrimination exists in the locals of the Boilermakers & Operating Engineer Unions that were investigated by the committee. Present law is not adequate to combat these abuses. The committee should consider legislation to permit a more rapid and effective remedy to hiring hall discrimination. In the meantime, the National Labor Relations Board should make sure that allegations concering union hiring hall discrimination in Cleveland and Pittsburgh are not summarily dismissed but are reviewed in accordance with established Board procedure.

Jones-Hilsdorf-Rom 2

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January 12, 1983

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RE: International Brotherhood of Boilermakers (Boilermaker Employers Association of Western Pennsylvania Area); NLRB Cases 6-CB-5857 and 6-CB-5859

Dear Mr. McDermott:

I am writing in response to yours of December 22, 1982, regarding the above-captioned cases, a copy of which is attached hereto as Appendix A. (P.4)

The assertions of the charging parties as stated in your first paragraph are based upon a faulty premise. The eight thousand (8,000) hour requirement for registration on the out-of-work list of Local Lodge No. 154 was not "formally implemented effective October 1, 1982." The Local Joint Referral Rules of Local Lodge No. 154, negotiated by management and union representatives to the Local Joint Referral Committee, first included a requirement of eight thousand (8,000) hours of experience at the trade of field construction boilermaking as an alternative to completion of a formal apprenticeship for registration as a journeyman boilermaker on February 9, 1979. Please see the Joint Referral Rules for Lodge No. 154 as amended on February 9, 1979, copy attached as Appendix B. P.16

The collective bargaining agreement then effective in Local Lodge No. 154 provided for establishment of a Joint Referral Committee and empowered it to "establish any and all rules and regulations consistent with the minimum standards and rules as provided in §VIII hereof, from time to time as it deems advisable for the operation of the job

referral plan . . ." (Please refer to Article III, §6(a) of the collective bargaining agreement effective June 1, 1976, through May 31, 1979, copy attached as Appendix C.) Pursuant to this contractually conferred authority the Local Joint Referral Committee negotiated the Local Joint Referral Rules referenced above as Appendix B. It is §5.4.1 of those rules which first set forth the eight thousand (8,000) requirement as a part of the collective bargain struck by the Union and signatory employers. This requirement has remained a part of collective bargaining agreements effective in Local Lodge No. 154 from that time. In this regard your attention is directed Article III, §5.4.1 of the current agreement (Appendix D) which became effective June 1, 1982.

The revised referral rules adopted by the Local Joint Referral Committee of Local Lodge No. 154 in 1979 were consistent with a set of Minimum Standards adopted by a national negotiating committee referred to as the National Joint Rules and Standards Committee. This is a committee composed of three union representatives and three management representatives, one each from the three major membership classifications of the National Association of Construction Boilermaker Employers. The National Joint Rules and Standards Committee derives whatever authority it has from the terms of local and area collective bargaining agreements. For example, Article III, §2 of the current agreement specifies that should the Local Joint Referral Rules Committee continue to operate an exclusive referral service such will be done in conformance with the Minimum Standards adopted by the National Joint Rules and Standards Committee. A copy of the revised Minimum Standards is attached hereto as Appendix E.

Stated briefly, it was the desire of employer representatives to the National Joint Rules and Standards Committee that some uniformity in qualifications among boilermakers should exist, to the extent practicable, throughout the United States inasmuch as boilermaker contractors seldom operate strictly within a local context. To the contrary, the majority of construction work employing boilermakers is done by contractors which operate throughout the country. Thus, it was agreed in these negotiations that a uniform standard requiring practical experience roughly equivalent to that acquired through a formal apprenticeship

program, four to five years of full-time "on hands" experience, should be similarly required of those who did not have the benefit of formal apprenticeship training. The eight thousand (8,000) hour requirement for classification of a registrant as a journeyman boilermaker was the amount of experience agreed upon in such negotiations. In February of 1979 it was the considered decision of the Local Joint Referral Committee of Local Lodge No. 154 to implement revised referral procedures in conformance with those Minimum Standards. Thus, the origin of the so-called "8,000 hour rule".

Welding is but one of the skills required of a journeyman boilermaker. While contractors may require boilermakers with certifiable welding skills, even as they may others with particular expertise at a given aspect of the trade, there exist no differing standards for registration or referral of "welders", as such, under the terms of the agreement currently in effect in Local Lodge No. 154. It is to be noted, however, that should a contractor require the services of a boilermaker who has current certification papers with that contractor, or other "special skills", such persons may be drawn from the out-of-work list in the order of their appearance on the list in accordance with the provisions of Article III, §6.4 as a boilermaker with "special skills and abilities". -p.22

I am advised that the Local Joint Referral Rules of Local Lodge No. 154 do not currently provide for qualification for registration other than by virtue of satisfactory completion of a recognized apprenticeship training program or by acquisition of the requisite eight thousand (8,000) hours. That is to say, there is no provision for qualification by virtue of written or practical testing.

As you must know, Local Lodge No. 154 is currently attempting to operate under the terms of an NLRB Order as enforced by the Court of Appeals. In its opinion the Board found that the Local Lodge Referral System had been administered in a subjective manner. The eight thousand (8,000) requirement is obviously intended to serve as an objective mechanism whereby both to avoid any inference of invidious discrimination and to assure contractors that they will receive the services of skilled, experienced

construction boilermakers in accordance with the wage scale set forth at Article XVIII of the agreement.

Assuming, arguendo, that the Region, the Board and the Court were correct in their construction of the local's administration of the exclusive referral system during the pertinent time period, then it may well be that persons such as charging parties were referred to employment and paid journeyman wages without possessing the requisite qualifications as established by the terms of the collective bargaining agreement. Even so, it is difficult to imagine a legitimate claim that they would have acquired eight thousand (8,000) hours "but for" unlawful discrimination. Had the Union rigorously adhered to the terms of the Local Joint Referral Procedures it is not seen how such persons as the charging parties would have been referred at all.

The importance of exclusive referral in the construction industry is so clearly perceived that the very question as to whether such will be included in the terms of collective bargaining agreements and the correlative terms of operation are mandatory topics about which construction employers and unions are bound by law to bargain. N.L.R.B. vs. Wooster, Division of Borg-Warner Corp., 356 U.S. 342 (1958); Houston Chapter, Associated General Contractors of America, Inc., 143 NLRB 409, enf'd. 349 F.2d 449 (5th Cir. 1965). Here, the parties, Local Lodge No. 154 and the multi-employer bargaining association, have by contract established a Local Joint Referral Rules Committee to engage in continuing negotiation regarding the administration of the Local Joint Referral Service. Included in such provisions regarding exclusive referral is a requirement of minimum experience for referral as a journeyman-boilermaker. This is, quite obviously, designed to assure a minimum level of experience and competence for those who are to be referred to and compensated by the employer as journeymen boilermakers. It also reasonably provides for an alternative means of acquiring journeyman status other than through formal apprenticeship training. The eight thousand (8,000) hour requirement is roughly equivalent to the extent of practical experience required by the traditional apprenticeship structure. Thus, it is difficult to see how such could be justifiably classified as an "arbitrary" precondition for registration as a journeyman boilermaker. For, of course, as to that about which the law requires

bargaining it concomitantly confers a broad range of discretion upon the bargaining agent in the decision making process. Humphrey vs. Moore, 375 U.S. 335 (1964). A careful comparison of the cases dealing with union conduct in negotiations as opposed to contract administration reveals that considerably more deference is afforded the union in the former context than in the latter.

> "Standards are not the same, for the status of the union, the statutory policy, and the practical needs of collective bargaining are quite different in contract administration. "The Duty of Fair Representation (Papers From the National Conference on the Duty of Fair Representation, sponsored by the New York State School of Industrial and Labor Relations, Cornell University), page 62 (Cornell University, 1977).

The logical need to afford greater judicial deference to unions in negotiation of an agreement than in its administration has not escaped explicit judicial notice. Pyzynski vs. New York Central Railroad Company, 421 F.2d 854, 862-863 (2nd Cir. 1970).

> "Although few other courts have made such an explicit differentiation, it is clear that most have at least explicitly recognized the considerations outlined above and have applied a correspondingly less standard to the union's negotiation activity." Boyce, Fair Representation, the N.L.R.B. and the Courts, page 15-16 (University of Pennsylvania, 1978).

By any evaluation of the duty of fair representation, the 8,000 hour requirement for registration on the out-of-work list cannot be catagorized as "arbitrary". This requirement for journeymen referral and compensation is not an abstract figure plucked from the air or accepted with nadiral disinterest in the desires of the membership. Bonafide collective bargaining has produced

precisely that which the law seeks to promote; a peaceful accomodation of competing interests effected by the parties themselves.

I cannot say that the 8,000 hour standard has been uniformly established and applied in all local hiring halls throughout the country. Such a condition for registration and referral as a journeyman boilermaker does indeed exist in, perhaps, a majority of local union hiring halls where local or area collective bargaining has resulted in an election to adopt referral standards conforming to the minimum standards. However, there are local unions wherein differing standards have been adopted through collective bargaining. In addition, local unions wherein referral procedures conform to the minimum standards may have yet established and applied additional and/or alternate procedures (e.g. trainee and "sub-journeymen" classifications) for which the Local Joint Referral Committee of Local Lodge No. 154 have not opted. Thus, it cannot be stated that the standards for referral are "uniform" throughout the country. It is, however, a fair statement that the obvious logic in requiring a minimum level of practical experience equivalent to that required in the customary apprenticeship as a minimum standard for referral as a journeyman boilermaker has heretofore obviated any serious challenge to the legitimacy of such a provision. I am appending a copy of the decision of Regional Director Harold A. Boire of Region 12, Tampa, Florida dated February 15, 1980, wherein he passed favorably upon the propriety of the standard in question.

As Local Lodge No. 154 labors under what must often appear as conflicting information as to how it must operate its referral system pursuant to the provisions of its collective bargaining agreement and the Order of the Court, it is the International Brotherhood's desire to assist in every way it can. Thus, we have responded at some length to your inquiries concerning these charges. However, I would note in conclusion that the International Brotherhood is not a proper respondent to the charging parties' allegations. The International Brotherhood is not signatory to the collective bargaining agreement with the Boilermaker Employers of the Western Pennsylvania Area nor is it a party to the Local Joint Referral Rules of Local Lodge No. 154. Under the provisions of both the

Mr. Joseph M. McDermott
January 12, 1983
Page Seven

International Brotherhood's Constitution and the terms of the applicable collective bargaining agreement, the Local Lodge functions as an autonomous entity without dominion by the International Brotherhood as to the function of its collective bargaining activities.

While I believe the foregoing would be dispositive of the issues raised in your letter, please advise if anything additional is desired. I am

Very truly yours,

Joseph W. Moreland

JWM:rb

cc: Mr. Harold J. Buoy,
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